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STOCK EXCHANGE

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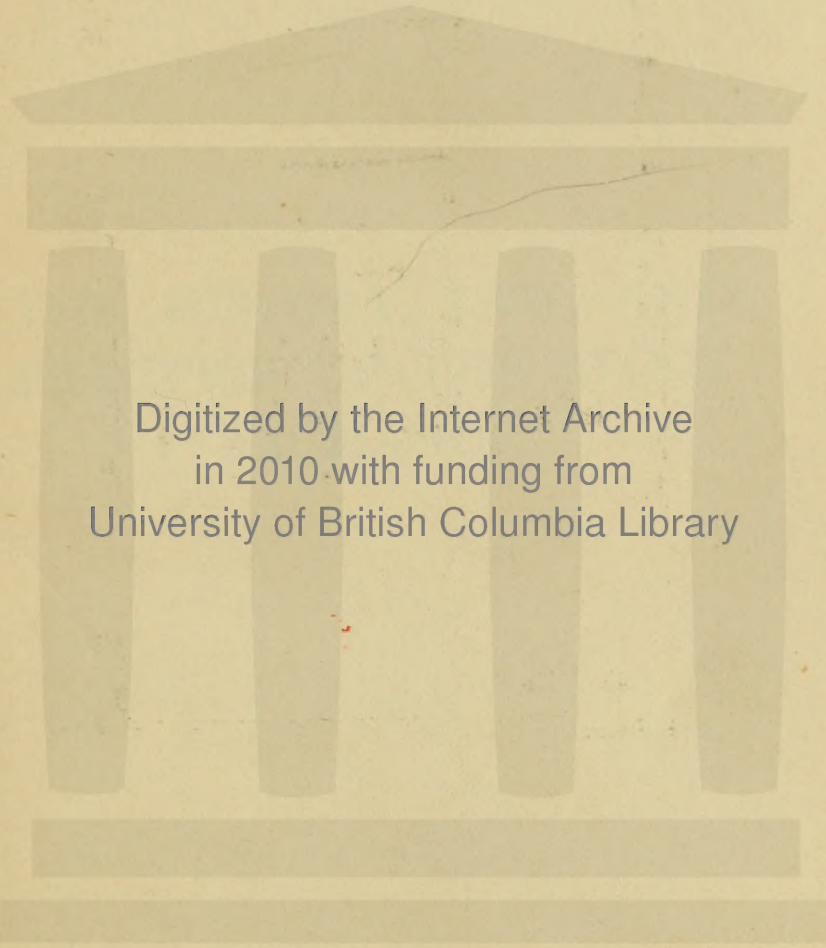
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# THE HISTORY, LAW, AND PRACTICE OF THE STOCK EXCHANGE

BY

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ASSISTED BY

F. H. CARRUTHERS GOULD

LATE OF THE LONDON STOCK EXCHANGE



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## PREFACE TO FOURTH EDITION

SINCE the publication of the Third Edition of this work the Rules and Regulations of the Stock Exchange have been altered. The new rules came into force on the 25th of March last, and as they were of sufficient importance, apart from other considerations, to render a fresh edition necessary, the occasion has been taken advantage of to make a thorough revision of the work. Whilst in the Press some further alterations in the Rules have been made by the Committee, and these have been duly noticed. It is hoped that the new edition may appeal not only to those who are immediately connected with the Stock Exchange, but to bank managers, solicitors, actuaries, company promoters, and business men in the British Dominions and India who may wish to make use of the facilities afforded by the Companies Acts for floating Companies in Great Britain and Ireland for the marketing of their commodities and produce.

Considerable and important additions have been made to the original work, mainly consisting of references to the provisions of the Companies Acts, 1908-17.

Attention is called to this because it sometimes happens that a Company, which has complied with the requirements of the Companies Acts and has obtained a certificate from the Registrar that it is entitled to commence business, is unable to obtain a Stock Exchange quotation because it cannot satisfy the more exacting requirements of the Stock Exchange Committee.

The New Edition of the Stock Exchange Rules and Regulations will be found printed in the Appendix, and the author gladly takes the opportunity of tendering his thanks to the Stock Exchange Committee for the permission they kindly accorded him of publishing them.

ARTHUR P. POLEY.

TEMPLE, 1926.





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MEMBERS of THE STOCK EXCHANGE are not ALLOWED to ADVERTISE for business purposes or to issue Circulars or Business Communications to persons other than their own principals.

Persons who advertise as Brokers or Share Dealers are NOT Members of the Stock Exchange or in any way under the control of the Committee.

Members issuing Contract Notes are required to use such a form as will provide that the words "Member of the Stock Exchange, London," shall immediately follow the signature.

A List of Members of the Stock Exchange who are Stock and Share Brokers may be seen at the Bartholomew Lane Entrance to the Bank of England, or obtained on application to Edward Satterthwaite, Secretary to the Committee of The Stock Exchange, Committee Room, The Stock Exchange, London, E.C.2





# The History, Law, and Practice of the Stock Exchange

## CHAPTER I

### THE HISTORY OF THE STOCK EXCHANGE

THE present Stock Exchange was opened in March, 1802, with some 500 subscribers. The record plate of the foundation-stone is thus inscribed: "On the 18th of May, in the year 1801, and 41 of George the Third, the first stone of this building, erected by private subscription for transaction of business in the public funds, was laid in the presence of the proprietors and under the direction of" . . . (here the names of the first nine managers are inscribed). The inscription then recites that the public fund debt had accumulated in five successive reigns to £552,730,924. Prior to 1802 brokers and jobbers had met for the transaction of their business at New Jonathan's, a coffee-house to which admission was gained by payment of sixpence. In 1773 the title of the Stock Exchange was applied to New Jonathan's, the fact being announced in a paper dated July 15th, 1773, as follows: "Yesterday the brokers and others at New Jonathan's came to a resolution that instead of its being called New Jonathan's, it should be called The Stock Exchange, which is to be wrote over the door." New Jonathan's seems to have been the successor to Jonathan's Coffee House, which was burned down. Jonathan's was one of the earliest homes of the jobbers, and reference is made to it in Mrs. Centlivres's comedy of "A Bold Stroke for a Wife," for in Act IV, Scene 1, a stockbroker at Jonathan's says: "I would fain bite the spark in the brown coat. He comes very often into the Alley, but never employs a broker." Prior to jobbers frequenting Jonathan's and Garraway's, stockbrokers frequented the Royal Exchange. Change Alley also was early identified with the jobber, for we find Dr. Johnson in his dictionary defining a jobber as a low wretch, who gets

money by buying and selling shares in the fund, going on to quote—

The stock-jobber then from Change Alley goes down,  
And tips you the freeman a wink.  
Let me have but your vote to serve for the town,  
And here is a guinea to chink.

The history of the South Sea Bubble records what is now known as a boom on the Stock Exchange, and as its effects had a far-reaching influence for years over the fortunes of the Stock Exchange, some description of it may not seem out of place. The South Sea Company—a Company of Merchants of Great Britain trading to the South Seas and the other parts of America, and for encouraging the fishery, came into active life on the 7th of September, 1711. Harley, Lord Oxford, was its governor, and St. John and the Chancellor of the Exchequer were active directors. It thus was a State affair, and early in its career St. John had to intimate that “for the public good of the nation and the particular advantage of this Company her Majesty has been pleased to assist them with a sufficient force in order to their making a settlement in the South Seas for their security and better carrying out the trade to these parts,” and the Company immediately press upon the Government “the getting ready the sea and land forces which are to go with the Company’s ships in their intended voyage.” The agreement made with Harley, Earl of Oxford, was that the Governors should take ten millions of the floating debt upon themselves for a certain time at six per cent interest, the Company having in return the monopoly of trade to the South Seas.

The earliest accounts of the Company show that they were largely engaged more or less in rivalry with the Royal African Company concerning the supply of negroes, and the Company congratulate themselves upon their fine generosity in obtaining their supplies from the Royal African Company when they might on more reasonable terms have provided them on the coast of Africa and at Jamaica. The negroes referred to seem mainly to have been conveyed to Jamaica, where there were many escapes, so that it became more profitable to sell an uncaught runaway for what he might bring than to spend money on recovering him.

Harley and St. John seem to have participated in arranging the



details of this slave trade, which in no wise shocked public opinion, for the most illustrious English clergyman of the age, though he denounced both of them before God as a couple of scoundrels, did so for their lack of discrimination in the selection of a bishop and not for their dealings with the African negro.

In 1717 the Company's stock was increased to twelve millions on consideration of their advancing the Government two millions to pay off the National Debt. The credit that the Company obtained over these transactions led to the making of a bold suggestion—no less than a project to take up the burden of the National Debt, which amounted to nearly thirty-one millions, and reduce the interest from 5 per cent to 4 per cent. To Sir John Blount, a daring financier, the conception of this scheme is due. The scheme on being placed before a committee of the House of Commons met with great favour; even the Bank of England were anxious to share in such a praiseworthy project. As might naturally be expected, with the announcement of the Committee's decision to allow a bill to be brought in, the Company's shares began to rise, the price jumping up from 130 to 300, the rise continuing as the bill made progress. Amidst the chorus of approbation that hailed the scheme it was difficult even for the voice of Walpole to be heard, and no serious attention was paid to his description of the absurdity of the bill and the evils that must necessarily follow its receiving Parliamentary sanction. The shares at one time nearly touched 400, ultimately fluctuating to 310—when the bill passed. Meanwhile Change Alley, Cornhill, and Lombard Street were thronged with the carriages of lords and ladies.

To quote from one of the ballads of the day—

Then stars and garters did appear,  
Among the meaner rabble,  
To buy and sell, to see and hear,  
The Jews and Gentiles squabble.  
The greatest ladies thither came  
And plied in chariots daily,  
Or pawned their jewels for a sum  
To venture in the Alley.

Within five days after the passing of the bill the directors asked the public to subscribe one million at £300 for every £100 capital. The subscription exceeded two millions and the stock advanced to £340.

A dividend was shortly afterwards announced at 10 per cent, and a second subscription of a million at £400 per cent was opened, and in a few hours a million and a half was subscribed.

The extraordinary success that had hitherto marked the history of the South Sea Company led to the formation of a swarm of companies. Some, such was the then existing public credulity, hardly attempted to disguise their bogus character. One company was called "A Company for carrying on an undertaking of great advantage, but nobody to know what it is": each subscriber of a £2 deposit was to be entitled to £100 per annum per share. Its flotation met with great success: no less than 1,000 shares being taken in six hours, and the deposits paid. In May South Sea stock reached 550, and in four days it rose to 890; it then fluctuated, falling to 640, finally rising to 1,000. Thenceforward its fall was rapid, and the Bank of England were reluctantly obliged to come to its assistance. The Company's stock ultimately fell to 150, and thousands of people were ruined. A storm of indignation followed. It was suggested by one peer that as there was no law for the punishment of directors, they should be tied up in sacks and thrown into the waters of the Thames. Walpole, however, made a more reasonable suggestion, which was ultimately adopted—namely, that there should be a Committee of Inquiry, and that the Bank of England should take over nine millions of the stock, and the East India Company another nine millions. The public indignation, however, required sharper measures, and the House of Commons ordered five directors, one of whom was Mr. Edward Gibbon, the grandfather of the historian, into custody of Black Rod. Meanwhile the treasurer, Knight, had secured the books and papers, and, disguising himself, escaped to Calais. He was ultimately apprehended, however, near Liège, and lodged in the citadel of Antwerp, but, extradition being refused, he escaped.

The Committee of the House of Commons, which sat with locked doors, reported that the Company's books had been falsified to a large extent and that fictitious stock had been distributed to members of the Government to assist in the passing of the Bill. The Earl of Sunderland had been assigned £50,000, Mr. Secretary Craggs £50,000, Mr. Charles Stanhope (one of the Secretaries to the Treasury) had received £250,000 as differences, and the Chancellor



of the Exchequer's account showed a profit of £794,451. On the trial of the accused Mr. Charles Stanhope was acquitted by three, the Chancellor Aislaby was expelled the House, his estates seized, and he was sent to the Tower; Sir George Caswall, a member of a firm of jobbers, was also expelled the House, committed to the Tower, and ordered to refund £250,000. The estates of Mr. Craggs, who had died before his examination, were confiscated, and a million and a half of money was obtained for the benefit of the sufferers. Every director had to pay, the whole of their wealth was taken from them, a small sum only being allowed to each wherewith to start life again.

During the boom fortunes were made and lost. Whilst Gay, the poet, at one time might have realized £20,000 on some shares which had been given to him, and, hoping to gain more, lost the chance, Guy, more successful in his speculations, was able to leave sufficient to build a splendid monument of himself in the hospital named after him.

To understand the reason why stockbrokers and jobbers first began to form a community it is necessary to turn to the end of the seventeenth century. The prosperity of the country had led to a great accumulation of wealth. Prior to the formation of the National Debt it was undoubtedly largely hoarded. It is related, for instance, that Pope's father, when in apprehension of the revolution which seated William III on the throne, fled from London and carried with him his fortune of £20,000 in a box. Investments were few. There were few ways in which money could be invested to earn interest except by securing it on land or on mortgage, or perhaps lending it to a neighbour on personal bond.

The Court occasionally favoured the City with borrowing money, and the citizens, to do them justice, were perfectly willing to lend, but the lending was in the nature of private loans and not of public borrowing. When the National Debt was started, although the pessimists of the time might shake their heads and prophesy all sorts of disasters from this innovation, there were a great many people who welcomed it with pleasure. No longer need they be troubled with money they had accumulated, and which they did not know how to dispose of, now they had the chance of investing it in Government securities, a method of investment which from the time of William III to the present day has always had the particular charm of safety. As will be subsequently shown,



the capitalists of those days largely availed themselves of this opportunity. Contemporaneously with the demand for the investments and the desire to buy and sell, a new profession sprang into existence.

In the Royal Exchange, stockbrokers and stock-jobbers were found, about the year 1693, busily engaged in dealing in the five million stock or so of National Debt available for purposes of transfer. By 1700, however, the Royal Exchange was deserted by them.

With the increase of the National Debt the business of stock-jobbing also tended to increase, and there seem to have been complaints of the excessive number of persons who devoted themselves to the business of brokers. These complaints, however, mostly arose from the public moralists, often at the time synonymous with disappointed speculators. The Legislature in 1734 passed an Act directed against stock-jobbing, directing that all contracts to putt upon, accept, or refute any public stock or securities and wagers relating to the value shall be void, and the money paid thereon restored or be recovered by action commenced in six months' time with double costs. A penalty was prescribed on persons making or executing any such putts or bargains. A penalty was also imposed on persons giving or receiving money to compound differences relating to stock not actually delivered. Brokers were required to enter all contracts in their books, and a penalty of £50 was imposed for each offence.

In 1762 a review of probably the first Stock Exchange book ever written appeared in the *Gentleman's Magazine*. The book was by J. Mortimer, and was entitled "Every Man his own Broker, or a Guide to Exchange Alley." It may be gathered from this work that "stock" in its then proper signification consisted of a certain quantity of merchandise or money which was made the foundation of trade and commerce, that the Joint Stock was the aggregate of money or merchandise, contributed by different persons, to be employed in trade or commerce for their joint benefit in proportion to their respective contributions. Further, it may be gathered that when a small number of persons in a private capacity formed such a joint stock they were called a co-partnership, and when a larger number obtained a charter to carry on any trade exclusively, and jointly contributed to it, they were called a company. Any proprietor of a certain stock in the common stock

could transfer it for a valuable consideration, which was either more or less than the sum originally contributed according to the profit produced by the trade.

At the beginning of the eighteenth century the two principal companies, in whose stocks there were dealings, were the South Sea and the East India Company, and as proprietors were numerous the transactions of buying and selling naturally were of frequent occurrence.

It must be remembered also that at this time the Government, instead of levying a tax which would raise in the current year the sum wanted for that year, were in the habit of borrowing the money they required, and levying a tax only to pay interest for it. The lenders of the money had the right to transfer their proportion of the debt, the value of every hundred pounds then fluctuating according to the interest payable on money. The Public Debt became known as the stocks or funds.

Stock-jobbing is said to have originated thus: Free liberty having been always given to all foreigners to buy and sell stock, many foreigners, particularly the Dutch, held large interests. Now, when stock was transferred, if the transfer had to take place at a public office, and to be done at the time of making the contract, it would have been impossible for persons abroad to seize advantageous opportunities of buying and selling, because the remittance could not with certainty be made in time; nor could proper letters of attorney be executed for the purposes of the transfer. It became, therefore, a reasonable custom to permit stock to be bought and sold for time, that is, to permit a contract to be made for any quantity of stock to be transferred at a future time and at a certain price, whether the price of the stock at that future time should be more or less than the price stipulated. Foreigners, particularly the Dutch, who were keen financiers, required agents to buy and sell for them, and it is largely due to foreign buying and selling of stocks that the profession of the broker arose. It became a necessity for an absent principal to employ an agent on the spot. It also became the custom for brokers to contract with each other for certain sums of stock without naming their principals, and at length under pretence of buying and selling for foreigners they bought and sold for themselves, or rather made contracts between themselves for buying and selling stock without having any stock



to sell on one side or money to buy it on the other, and indeed without the least design either to transfer or accept any part of the stock which was made the foundation of the contract.

In these "time contracts" the seller was called the bear, and the one who contracted to buy was called the bull. The first was probably called a bear from the proverb applied to those who sell contingencies, that they sell the bear's skin while the bear runs in the wood. The other was called a bull probably only by way of distinction from the bear. The writer whom I have already referred to states the nature of differences thus. He says, when "contracts for time" were made between persons who had neither stock nor money, they settled the account between them when the time came for making the transfer by paying the difference between the price of stock then and the price stipulated in the contract.

The following important cautions throw some light on Stock Exchange life at the time when Jonathan's was a favourite jobbers' haunt. They were given by a writer in good faith to the public—

- (1) Never remove your money at a loss but in cases of absolute necessity; but, instead of believing idle reports of bad news, wait patiently till the situation of public affairs has brought your stock to the value at which you bought it, or higher.
- (2) Never follow the advice of a man who would persuade you to be continually changing the situation of your money, for he is certainly influenced by some private motive.
- (3) When you receive bank notes for stock examine if they are above a year old. If they are, have them examined and marked at the proper office before you take them; and if you take the purchaser's draft on the banker's for the stock you sell, let the draft be drawn on the back of the receipt you are to give him, and then you will not part with the receipt till you have received your money, and you will be sure to part with it then as you cannot receive your money without it.
- (4) Be careful what letters of attorney you give: let them be for some limited and particular act, for a general letter of attorney gives a most absolute and unlimited power, and by this people have sometimes put their property into the hands of jobbers, who have lost it in the Alley, and in



the meantime have amused the proprietor by a punctual payment of the half-yearly dividend.

- (5) Take the numbers and principal contents of all public securities for money in a pocket memorandum book to be kept always about you, so that if you escape from a fire with only your clothes you may be able to swear to your property.
- (6) When you receive a draft on your banker get it paid as soon as convenient any time before four in the afternoon of the same day, for a man may have cash at his banker's in the morning and draw it all out before night; and if you present your draft the next day, and the banker shall have stopped payment with cash of your principal in his hands sufficient to pay your draft, you have no remedy but to come in as a creditor of the banker's.

A good deal of the advice given then is applicable at the present day, but the counsel is more interesting by the side-light that it throws upon the necessity for presenting bankers' drafts by reason of the instability of these institutions—a contingency which the possessor of a banker's draft had seriously to contemplate

There is but little doubt that the development of Joint-Stock enterprise advanced by leaps and bounds from the accession of William and Mary. The Dutch, a great commercial nation, with a knowledge of finance that they acquired from Italy, from the Venetians and the Lombards, followed in the train of William, and London rapidly became one of the great money markets of the world.

In 1694 the Government, as an expedient for raising money, determined upon establishing a National Bank. The idea emanated from the ingenious brain of William Paterson, a Scotchman, but it was not at once carried into effect, for it met with a most strenuous opposition in the City. Nevertheless, when it was founded, its capital of £1,200,000 was subscribed in a few hours. It remained the sole Joint-Stock Bank till 1834. The year 1698 witnessed the passing of the Bill establishing the General Society, a public company which took over the monopoly of the old East India Company. The subscription list was opened on the 14th of July in that year at the Hall of the Mercers' Company in Cheapside, and such a scene as may nowadays be witnessed on the opening of a public

subscription for a popular Government loan was there witnessed. The creation of the National Debt was a little earlier than the establishment of the Bank of England. The borrowings of William for the purposes of his wars is distinguishable from previous borrowings of earlier sovereigns by reason of the loans being thrown open to public subscription. Prior to William's time our sovereigns had been content to raise the money from the goldsmiths or from the City Companies, but this practice now ceased. There is little doubt that the creation of the National Debt was politic, and ultimately tended to preserve the crown for the Georges by enlisting the moneyed classes of the country as supporters of existing institutions.

At this period eight per cent was paid by the Government, a rate of interest not too high, having regard to the clouded political horizon. The year 1720 saw the rise of the Royal Exchange and the London Assurance Corporations, two well-known institutions. Whilst the creation of the National Debt and the Bank of England promoted legitimate speculation, as already shown, at the same time a wild frenzy of speculation sprang up, which culminated in the bursting of the South Sea Bubble.

From the christening of New Jonathan's as the Stock Exchange in 1773 to the opening of the present Stock Exchange in 1802 a period of nearly thirty years elapsed; naturally the continual increase of the debt and the opportunities afforded for buying and selling Government funds led to a multiplication of the number of persons who dealt in securities. The business of brokers and jobbers, notwithstanding the outcries which arose from time to time as to the immorality of time bargains, was essential to the existence of a commercial nation. Our Courts of Law, which as a rule follow the dictates of business and commercial usage with stately steps as early as the time of George I, declared that an action would lie on an implied promise to pay—the old action of *assumpsit* when a party had a difference arising out of a contract for the sale of stock in his hands. The party who held this difference was declared to be a receiver of the money to the others' use. (*Dutch v. Warren*, M. 7, George I, *Stra.* 406, 2 *Burr* 10. This statement of the law met with the approval of that great commercial judge, Lord Mansfield, in *Moses v. Macfarlane*, E. 33, George II, K.B., 2 *Burr* 1008.)

Whilst the number of persons employed as brokers and jobbers



grew, naturally there was an increasing demand for accommodation and facilities for carrying on business.

At one period a portion of the rotunda of the Bank of England became a centre for the transaction of business in the Public Funds. Probably, also, the markets overflowed into the streets and courts round and about Change Alley.

It is doubtful whether brokers or jobbers could ever have found sufficient privacy to carry out their mutual dealings. The energetic client might desire to follow his broker. He could not well be restrained from entering a public place. The necessity for some convenient building where the work of buying, selling, or negotiating could be transacted without interference became imperative. Accordingly a number of members combined to buy a site at Capel Court, on which was subsequently erected the first portion of the Stock Exchange building. The capital subscribed was £20,000, which was divided into four hundred shares of £50 each. To this new Stock Exchange the business carried on elsewhere was transferred. New Jonathan's, at any rate in its later days, had been under the management of a General Committee; and the expenses of management had been defrayed by voluntary subscription. This Committee, in addition to the business of management, exercised judicial functions as a domestic forum for the liquidation of defaulters' accounts, and for other purposes, probably relating to the conduct of members, and the settlement of disputed bargains. The first Committee of the Stock Exchange consisted of the nine promoters of the scheme and twenty-one other proprietors. This Committee met at a neighbouring tavern, and elected members by ballot, the subscription to the Stock Exchange then being ten guineas. The deed of settlement subsequently drawn up recited that whereas the Stock Exchange in Threadneedle Street where the stockbrokers and stock-jobbers lately met for the transaction of their business had been found to be too inconvenient, William Hammond, and others, who were appointed trustees and managers, came to a resolution to erect a more commodious building for that purpose. On the opening of the Stock Exchange it appeared that there was a list of 500 subscribers.

In March, 1802, the following list of stocks then dealt in appears in the *Gentleman's Magazine*: Bank Stock, Consols, Navy, Long and Short Annuities, India Stock, India Bonds, Exchequer Bills, Funds,



South Sea Stock, Old Annuities, New Annuities, Omnium, Irish 5 per cents, Imp. 3 per cents, English lottery tickets, English prizes—a list which gives considerable matter for reflection, when it is contrasted with the present list of securities dealt in, since it so clearly denotes the enormous growth of the joint-stock system in the last hundred years.

Notwithstanding the opening of the House, business in the foreign funds continued to be carried on in the Royal Exchange, and continued to be so carried on till 1822.

The Royal Exchange had been an original meeting-place for stockbrokers and jobbers, and they had a walk there, but complaints having been made that the building was being diverted from the objects contemplated by its founder, in 1698, or at any rate by the year 1700, the majority of them migrated, although the Corporation of the Royal Exchange, who had joined in abusing them, soon repented of their action, and tried to stop them from leaving by inserting conditions in their bonds as brokers, binding them not to assemble in Change Alley. This, on the whole, however, had no effect, for some business was still carried on there.

So far we have traced the history of the Stock Exchange to the beginning of the nineteenth century. Before passing on to narrate its progress up to the present time, something must be written of the estimation it was held in by public opinion in its earlier days. It was stigmatized as immoral, a social curse, and a public evil; yet, though frequently the subject of invective by many who did not scruple to avail themselves of the means of speculation it afforded, it continued to flourish, and men in increasing numbers were found devoting themselves to its business. At a time when the telegraph was unknown, and communication abroad uncertain, in any case involving delay, false reports often raised or depressed the market. Nevertheless, praiseworthy efforts were made and expense incurred by the great financial houses of the day to obtain intelligence. A highly organized secret system of transmitting news undoubtedly existed during the period of the Napoleonic wars. To obtain early and truthful tidings of important events meant certain wealth to the fortunate possessor of the knowledge. Whilst Napoleon was trying to exclude British trade from the Continent, the packet which, in defiance of his edicts, carried contraband goods

to some French or Dutch port often sailed back with secret intelligence from some trusted emissary of what had transpired on the Continent. We can follow the journey from Dover to London of some confidential representative of one of the great commercial houses, the secret interview with the principal in the London Counting House, the consequent sale or purchase of funds, hours, maybe, or even days, before other members of the House were apprised of the news. An upward movement in the funds might be an intelligent forecast of coming events, or based on surer data. More often it was the latter. Fortunes were made or lost in a few hours, and the public were left to wonder whether by skill or good luck.

The subsequent growth of the Stock Exchange and its membership is contemporaneous in a large measure with the progress of trade and commerce throughout the world. Bursts of speculation have always attracted new candidates for admission. Amongst noticeable periods, that of 1825 was especially marked with great prosperity. The three per cents rose in July, 1825, to 96, an elevation which they had not previously attained since 1792. The stocks of many banks and joint-stock companies advanced in similar proportion, some to a greater extent. At the beginning of the year there were 276 joint-stock companies in existence in Great Britain, the subscribed capital of which was no less than £174,000,000 sterling. Amongst these, Canals and Docks, Railway, Gas, Insurance, and Banking companies were the principal. Railways then, it is interesting to note, were, both in point of number and subscribed capital, the chief objects of public solicitude. Of the 276 companies, 48 were railway companies, with a capital of £22,454,000, whilst two newspaper companies only existed. The boom in commercial enterprise unexpectedly terminated, and a period of prosperity was followed by disaster. No less than £12,000,000 of treasure was exported to South America to open up the South American mines, twenty millions of which was invested in English companies, and the bulk lost. Other causes, however, contributed to accentuate the acute financial depression which followed the year 1825. The history of Stock Exchange speculation is not part of the scheme of this book. Nevertheless, the great railway boom cannot very well be left unnoticed in recounting the history of the Stock Exchange.



In 1845 in the official list of the Stock Exchange were quoted no less than 280 different kinds of railway shares. In December, 1849, the number had fallen to 160. It may be permissible to quote from the *Railway Times* of September 30th, 1849: "From the fall of dividends, the writer says, on all the lines, and continual pressure of calls, the distrust of railway property became such that towards the autumn of 1849 large masses of it were practically unsaleable. The retrospect of the third quarter of 1849 is the most dismal picture that it has ever been our duty to lay before our readers. Gloom, panic, and confusion appeared to have taken possession of the railway market, and a commensurate depression in the value of all lines, good, bad, and indifferent, has been the result. A glance at the market will suffice to convey a knowledge of the overwhelming depreciation which now exists—a depreciation including even the principal lines, the main arteries of the internal traffic of the country. Within the last few weeks the stock of the London and North-Western Company has fallen twenty per cent." In some of the journals the loss in September, 1849, sustained by the then holders of railway shares has been estimated at so large an amount as 180 millions sterling. On the 1st of January, 1846, London and North-Western stock stood at 215, on 1st January, 1850, it stood at 109. To such vicissitudes was the railway market at that time exposed. Thenceforward railway stocks slowly improved. The increase of membership during this period rendered it necessary to provide additional accommodation for the members of the "House," and accordingly the building of 1802 was pulled down and entirely rebuilt.

In 1850 there were upwards of 900 members of the Stock Exchange.

Reference has already been made to the dealers in foreign funds, and some statement as to the rise of the Foreign Market may not be inappropriate here. Foreign States were frequently in the habit of borrowing money from English merchants, and this without the Royal assent. They came over as private debtors might, and applied for a loan, almost invariably of a temporary character. In 1730 Sir Robert Walpole, on the occasion of the Emperor (Charles VI) desiring to borrow £400,000 in London, introduced a Bill prohibiting loans to Foreign Powers without the Royal Licence under the Privy Seal. Mr. Daniel Pulteney opposed the Bill, his objection being that whilst the Bill restrained our merchants from



assisting the Princes and Powers of Europe, it permitted our stock-jobbers to trade in their funds without any interruption. A merchant Member of the House, who supported the Bill, said that he could make it appear that the Emperor's agents had been in Change Alley; that he knew a particular individual who had been applied to for £30,000 and others for very large sums, but refused to advance them as fearing the displeasure of the Government. The Bill was also opposed by Sir John Barnard, Member for London. Nevertheless, it became law. Its duration, however, was limited for two years, and it was never renewed. Foreign borrowings or loans, however, did not become of much importance till after the Peace of Paris in 1814. At that time the French Government contracted a loan with the Messrs. Baring to discharge the indemnities they were compelled to pay to other nations in pursuance of the provisions of this treaty.

The following is a detailed list of the foreign loans contracted in this country up to the year 1825—

## 1821—

Spanish . . . . . £1,500,000 5 p.c. at 56 .. A. F. Halderman & Co.

## 1822—

Chili . . . . .	1,000,000	6	„	„	70	..	Hallett Brothers
Columbian...	2,000,000	6	„	„	84	..	Henry Graham & Co.
Prussian ...	3,500,000	5	„	„	84	..	N. M. Rothschild
Peruvian ..	450,000	6	„	„	88	..	Frys & Chapman
Russian ...	3,500,000	5	„	„	82	..	N. M. Rothschild

## 1823—

Austrian ...	2,500,000	5	„	„	82	..	N. M. Rothschild
Portuguese ..	1,500,000	5	„	„	87	..	B. A. Goldschmidt
Spanish . . . . .	1,500,000	5	„	„	30 $\frac{1}{4}$	..	J. Campbell & Co.

## 1824—

Brazilian ..	3,200,000	5	„	„	75	..	T. Wilson & Co.
Buenos Ayres	1,000,000	6	„	„	85	..	Barny Brothers
Columbian...	4,750,000	6	„	„	88 $\frac{1}{2}$	..	B. A. Goldschmidt
Greek . . . . .	800,000	5	„	„	59	..	Loughnan
Mexican ....	3,200,000	5	„	„	58	..	B. A. Goldschmidt
Neapolitan ..	2,500,000	5	„	„	92 $\frac{1}{2}$	..	N. M. Rothschild
Peruvian ..	750,000	6	„	„	82	..	Frys & Chapman

Since 1824 the number of foreign borrowings has enormously

increased, and London holds the proud position of the chief money market in the world.

Reference has been made to the establishment of the Bank of England in 1694. Its charter received confirmation by the 5th Will. & Mar. c. 20, s. 20. Its duration was extended to 1705, and these charters have been renewed from time to time. Although the history of the Bank of England is only incidental to the history of the Stock Exchange, yet some account of this great institution may not be out of place. It has been previously stated that its original capital was £1,200,000. This sum was lent to the Government at 8 per cent interest, and £4,000 was allowed for management. The original capital of the Bank had been from time to time augmented until in the year 1816 it reached the sum of £14,553,000, upon which the stockholders drew dividends. At this figure it still remains.

The last year in which the charter of the Bank was renewed was 1844; previously to that it had been renewed in 1833, when it had been provided that a renewal should last for twenty-one years with a power of modification by Parliament at the end of ten years. This power was taken advantage of by Sir Robert Peel, who took the opportunity of moving certain resolutions in the House of Commons indicating his views. These were as follows—

- I. That it is expedient to continue to the Bank of England for a time to be limited certain of the privileges now by law given to that corporation subject to such conditions as may be provided for by any Act to be passed for that purpose.
- II. That it is expedient to provide by law that the Bank of England should henceforth be divided into two separate departments, one exclusively confined to the issue and circulating of notes, the other to the conduct of the banking business.
- III. That it is expedient to limit the amount of securities upon which it shall be henceforth lawful for the Bank of England to issue notes payable to the bearer on demand, and that such amount shall only be increased under certain conditions to be prescribed by law.
- IV. That it is expedient to provide by law that a weekly publication should be made by the Bank of England of the state both of the circulation and of the banking departments.

- V. That it is expedient to repeal the law which subjects the notes of the Bank of England to the payment of the composition for stamp duty.
- VI. That in consideration of the privileges to be continued to the Bank of England the rate of fixed annual payments to be made by the Bank to the public shall be £180,000 per annum.
- VII. That in the event of any increase of the securities upon which it shall be lawful to issue such promissory notes as aforesaid, a further annual payment shall be made by the Bank of England to the public over and above the £180,000 equal to the net profit owing therefrom.
- VIII. That it is expedient to provide by law that such banks of issue in England and Wales as now issue promissory notes payable to bearer shall continue to issue such notes subject to such limitations as may be provided for that purpose.
- IX. That it is expedient to prohibit by law the issuing of any notes payable to bearer by any bank not now issuing such notes, or by any bank to be hereafter established in any part of the United Kingdom.
- X. That it is expedient to provide by law for the weekly production of the amount of promissory notes payable to bearer on demand circulated by any bank authorized to issue such notes.
- XI. That it is expedient to make further provision by law for the regulation of joint-stock banking companies.

The resolutions moved by Sir Robert Peel reflected his views, which he supported by his speeches in the House of Commons. These views, however, were the outcome of the deliberations of a Committee which had been appointed in 1832 to take evidence as to the expediency of renewing the Bank Charter. The highest financial authorities of the time gave evidence before this Committee. The Bank Charter Act subsequently passed through Parliament without any serious opposition.

The governing body of the Bank of England now consists of a governor, a sub-governor, and twenty-four directors. It is the custodian of the Government money; it holds the cash reserves of the other banks of the country, and is substantially the protector of our financial system.



It makes the bank rate, circulates or withdraws gold from circulation, aids the money market and the national credit in times of commercial stress, and more especially does it manage the business relating to the National Debt.

In 1892 a Bank Act was passed making provision for the grant of a supplementary charter.

To return to the subject of the National Debt, the origin of which has already been mentioned, some account of its composition may be given. On the conclusion of the peace of Ryswick, in 1697, it amounted to about £20,000,000, and the revenue was deficient by no less than £5,000,000, a very considerable sum even for a Government in these days. Besides this deficiency, Exchequer bills were at a discount of 40 per cent. It therefore became necessary that the national credit should be redeemed, and further borrowings became necessary.

These Exchequer Bills were for the first time issued in the preceding year, owing to the scarcity of specie occasioned by the re-coinage in that year. They were made out for sums of £5 and upward, and bore interest at the rate of  $7\frac{1}{2}$  per cent. The interest, however, was irregularly paid, and there was probably no great confidence in the stability of the Government. To these and also possibly to the distrust that was felt to the new form of security may be attributed the considerable fall in their face value. The method that the Government adopted was to empower the Bank to augment its capital by receiving subscriptions which could be paid in Exchequer bills. The effect of this was to restore the bills to something like their proper value. Since 1697 Exchequer bills have often been at a discount, when they either have had to be converted into permanent stock or the interest raised.

At the present day the Act 29 Vict. c. 75 fixes the rate of interest, and this is advertised by the Treasury every half-year, the rate varying with the rate of interest in the money market. Formerly the interest on the outstanding bills had been computed at the rate of so much per cent per day.

Exchequer Bonds are also issued by the Treasury under the Act just previously referred to. They are distinguishable from Exchequer Bills, since they are securities which run for a definite period which cannot exceed six years. At the end of the period the security

matures, and the holder must present it for payment, for interest no longer runs.

Treasury Bills represent a means resorted to by the Government of borrowing money for temporary purposes. The Government issues notes known as Treasury Bills; the bill is in a prescribed statutory form, payable at a date not more than twelve months from the original date of the bill. The amount and rate of interest are specified.

Bank annuities were created in 1726 for the purpose of cancelling Exchequer Bills that had been issued to defray the arrears of the Civil List, the capital was irredeemable. Consols, or Consolidated Annuities, commenced in 1731. They took their title from an Act of 1751, the statute of that year, the 25 George 2, c. 27, consolidating several separate stocks bearing 3 per cent into one general stock.

At one time it had been the custom to allocate specific portions of the Revenue to each part of the debt, and the rate of interest varied considerably; but this was found to be an inconvenient process, so the whole of the revenue was ultimately hypothecated for the payment of interest.

Government loans are termed either funded or unfunded. The distinction exists between these loans for whose payment a date is not fixed, and those for whose payment a date is. The former represent the funded, the latter the unfunded debt.

Reference has already been made incidentally to the Act of 1734 which made contracts and compounding for differences not merely void but illegal, and in treating of the History of the Stock Exchange the attitude of the Legislature on this matter requires consideration.

Prior to the reign of George II wagering transactions or time bargains on the Stock Exchange were not interfered with by legislation, although the Acts for enlarging the Capital Stock of the Bank of England had clauses dealing with time bargains in Bank Stocks, 8 & 9 Will. 3, c. 20, 8 & 9 Will. 3, c. 32. Indeed the practice of making time bargains was then only of comparatively recent origin, but the outcry that followed the bursting of the great South Sea Bubble was so great that the legislation subsequent was only a matter of time. In 1733 a Bill was introduced into the House of Commons to prevent the scandalous practice of stock-jobbing, which passed by a majority of six



only—the numbers being 55 against 49. But it underwent so many alterations in the Lords that it was subsequently dropped. The following year a Bill was introduced by Sir John Barnard, one of the City members—a gentleman of the highest reputation for commercial experience—and the Bill successfully passed both Houses. It is generally known as Sir John Barnard's Act (7 George 2, c. 8).

Some idea of the spirit that influenced the Legislature at that time may be gathered from the title of the Act. It is called "An Act to prevent the infamous practice of stock-jobbing," and it recites that "whereas great inconveniences have arisen and do daily arise by the wicked, pernicious, and destructive practice of stock-jobbing whereby many of His Majesty's good subjects have been and are diverted from pursuing and exercising their lawful trades and vocations to the utter ruin of themselves and families, to the great discouragement of industry, and to the manifest detriment of trade and commerce." It then proceeds to enact that "all contracts or agreements upon which any premium or consideration should be paid for liberty to put upon or to deliver, receive, accept, or refuse any public or joint-stock or other public securities whatsoever . . . or any part, share, or interest therein, and also all wagers and contracts in the nature of wagers, and all contracts in the nature of putts and refusals relating to the then present or future price or value of any such stocks or securities as aforesaid shall be null and void to all intents and purposes whatsoever : and all premiums, sum, or sums of money whatsoever which shall be given, paid, or delivered upon all such contracts or agreements or upon any such wagers or contracts in the nature of wagers as aforesaid shall be restored and repaid to the person or persons who shall give, pay, or deliver the same, who shall be at liberty within six months from and after the making such contract or agreement or laying any such wager to sue for and receive the same from the person or persons to whom the same is or shall be paid and delivered with double costs of such by action of debt founded on this Act to be prosecuted in any of His Majesty's Courts of Record in which action no essoin protection wager of law or more than one imparlance shall be allowed, and it shall be sufficient therein for the Plaintiff to allege that the defendant is indebted to the Plaintiff or has received to the Plaintiff's use the money or premium so paid or received whereby



the Plaintiff's action accrued to him according to the form of this statute without setting out the special matter."

The statute also inflicted penalties both for entering into such contracts and for making payments in respect thereof, not only on the parties but on brokers, agents, scriveners, or other persons negotiating, transacting, or writing any such contracts, bargains, or agreements. Another section was enacted for preventing "the evil practice of compounding or making up differences for stocks or other securities bought, sold, or at any time hereinafter to be agreed so to be." The section runs: "Be it further enacted that no money or other consideration whatsoever (except as hereinafter is provided) shall from and after the 1st day of June, 1734, be voluntarily given, paid, had, or received for the compounding, satisfying, or making up any difference for the non-delivering, transferring, having or receiving any public or joint-stock or other public securities or for the not performing of any contract or agreement so stipulated and agreed to be performed, but that all and every such contract and agreement shall be specifically performed and executed on all sides, and the stock or security thereby agreed to be assigned, transferred, or delivered shall be actually so done, and the money or other consideration thereby agreed to be paid for the same shall also be actually and really given and paid and all and every person and persons whatsoever who shall from and after the 1st of June, 1734, voluntarily compound, make up, pay, satisfy, take, or receive such differences, money, or other consideration whatsoever for the non-delivering, transferring, assigning, having, or receiving such stock or other security so to be agreed to be delivered, transferred, assigned, had, or received as aforesaid (except in the manner hereinafter provided) shall forfeit and pay the sum of one hundred pounds to be recovered by action. . . ."

It is unnecessary to deal with the other stringent clauses of this Act; it is sufficient to say that the objects sought by the Act were the prevention of the making of contracts between persons not actually possessed of such stock, for the sale or purchase of stock at a future period without the execution of such contract by an actual transfer of the stock, thus attempting to suppress the practice of merely paying or receiving the difference in the market value of stock on the day named for the completion of the fictitious bargain

such a transaction amounting in fact to a mere wager on the price of the stock.

The object aimed at by Sir John Barnard's statute was only partially attained, for the Courts held that the statute did not apply to Foreign Stocks nor to Shares in Companies, but only to English Public Stocks. Lord Mansfield in *Mitchell v. Broughton* (1 *Ld. Raym.*, p. 673) said that "the Statute must be construed strictly: it destroys bargains"; and where a plea was put upon the record that a bond was given for securing a moiety of a sum paid for compounding and making up differences, and that such bond was consequently void by reason of this Act, he held that the plea was not a defence against an action brought on the bond; that the offence relied upon as furnishing a ground of defence was not *malum in se* but only prohibited by the Act; that where, as in this case, one or two persons had paid money for another and upon his account, and the latter had given his bond to receive the repayment of such money, such a transaction was not prohibited. For "the person giving the bond is not concerned in the use which the other makes of the money; he may apply it as he thinks proper. Between these two this was certainly a pure, honest transaction." Now Sir John Barnard's Act has been repealed, and since then, except in so far as Stock Exchange transactions fall within the Gaming Acts, they are unaffected by special legislation.

Allusion has been made both to stockbrokers and stock-jobbers in earlier pages. In describing the history of the Stock Exchange, and before proceeding to treat of the modern functions of stockbrokers and jobbers, some account of the origin and general significance of the term broker may be interesting. Brokers are described by the Stat. 1 Jac. 1, c. 21, "as persons employed by merchants English and merchants strangers in contracting, making, and concluding bargains and contracts between them concerning their wares and merchandises and monies to be taken up by exchange between such merchant and merchants and tradesmen." Under the title *Merchant C*, Chief Baron Comyn defines them "as persons employed among merchants to make contracts between them and to fix the exchange for payments of wares sold and bought." In later times Chief Justice Tindal defined a broker "as one who makes bargains for another and receives a commission for so doing, as, for instance, a stockbroker." Abrocamment, that is brokerage, is described by



Spelman as signifying the buying of goods by wholesale in whole bags or packages before delivery or conveyance to the market and afterwards the separating the same into portions or allotments. The term "broker" is of extreme antiquity in the Statute books. It appears in the *Statuta Civitatis Londini* in the 13th year of Edward I that no brokers were to be in London but those admitted and sworn by the Mayor and Aldermen. By section 8 of the Statute of James I, c. 21, already alluded to, brokers are mentioned in London using and exercising the ancient trade of brokers between merchant and merchant.

The term received legal notice as applied to those transacting business in the public funds in the Statute 8-9 Will. 3, c. 20, s. 6, three years after the date of the incorporation of the Bank of England, and the allusion to brokers is far from complimentary. The Act recited "that of late brokers had carried on most unjust practices in selling and discounting Tallies, Bank Stock, Bank Bills, Shares and Interests in joint stocks and other matters and things, and had wilfully combined and confederated themselves together to raise or fall these from time to time as might most suit their own private interest and advantage, which is a very great abuse of the said ancient trade (of a broker generally) and employment and is extremely prejudicial to the public credit of this kingdom and to the trade and commerce thereof, and if not timely prevented may ruin the credit of the nation and endanger the Government itself." The Act then declares that none were to act as brokers without a licence from the Lord Mayor and Court of Aldermen. They were to be compelled to take certain oaths and to give bonds for their good behaviour. Their number was limited to one hundred. Their names and places of abode were to be affixed to the Guildhall and Royal Exchange. They were subjected to heavy penalties if they dealt for themselves in any merchandise or in those tallies, stocks, etc. Their charges for brokerage were limited to 2s. 6d. per cent on all public funds, and to 1s. per cent on Exchequer Bills. They were to keep books which were to be produced when reasonably required. By the 6 Anne, c. 16, s. 4, all brokers were required to be admitted by the Court of Mayor and Aldermen of the City for the time being under such restrictions and limitations for their honest and good behaviour as the Court shall think fit and reasonable, and were



required upon each their admission to pay to the Chamberlain of the City for the time being the sum of 40s., and also yearly pay the sum of 40s. on the 29th day of December in every year. A penalty of £25 was imposed upon persons acting as brokers within the City without being admitted as such. By the 16th Anne, c. 19, s. 121, a penalty was also imposed upon every person who should be employed as a broker on behalf of any other person to make any bargain or contract for the buying or selling of any Tallies, Orders, Exchequer Bills, Exchequer Tickets, Bank Bills, or any Share or Interest in any joint stock created by Act of Parliament and who should take or receive directly or indirectly any sum of money or other reward exceeding the sum of 2s. 9d. per cent. The Statute 57 George 3, c. 60, increased the fee on admission to £5, and the penalty upon a person for taking upon himself to act as a broker to £100.

In the year after the passing of the Statute of Anne already referred to, the Court of the Mayor and Aldermen of the City of London made certain rules and regulations concerning brokers which for many years continued in force. Every person on being admitted a broker had to take an oath, the form of which was prescribed by the rules and regulations. He also had to enter into a bond to the Mayor, Commonalty and Citizens of London in a penalty of £500. The condition of the bond was that the broker should on every contract made by him declare and make known to such person or persons with whom such agreement was made the name or names of his principal or principals, either buyer or seller, if thereunto required, and that he should not directly or indirectly by himself or any other deal for himself in buying any goods, shares, or merchandise to barter or sell again upon his own account or for his own benefit or advantage, or make any gain or profit in buying or selling any goods over and above the usual brokerage.

In 1870 the powers of supervision which the Corporation had hitherto exercised over brokers were restricted to the receiving fees for admission, etc., and to striking off the list a broker convicted of felony. In 1884 the City's authority over brokers was ended. The Act by which this was effected was entitled "An Act for the Relief of the Brokers of the City of London." At the present time admission by the Court of Aldermen and payments by brokers in respect thereof no longer exist.

Before closing this account of the history of the broker, it should

be noticed that since members of the public are not allowed to enter the Stock Exchange, it follows that they cannot deal on the Stock Exchange except by employing a broker who is a middleman, although there is nothing to prevent two members of the public, one a seller and the other a buyer, carrying out the transaction without invoking the middleman's assistance. The employment of the broker and the exclusion of the public from direct dealings with the jobber were, no doubt, gradually evolved in course of time from the nature of the business pursued. When brokers and jobbers frequented the Coffee Houses about Change Alley "every man could be his own broker." All that the jobber would demand would be that the person with whom he had dealings should be of sufficient financial ability to give him assurance that he would adhere to his bargains. In course of time it may be not unnaturally supposed that the public found that the jobbers declined to deal with strangers and would only transact business with brokers whom they knew. Thence it was an easy transition to insist upon the broker's personal responsibility to the jobber for every contract that he entered into for his principal, and the consequent exclusion of the public from all direct dealings with the jobber. In recent years, however, a practice amongst certain jobbers originating during the time of the Kaffir boom has sprung up of approaching company promoters and others direct.

Prior to the opening of the present Stock Exchange in 1802 there were rules and regulations in existence drawn up by a committee, and the relationship of broker and jobber seems to have been determined by this body. In the course of the growth of business it would seem but reasonable that broker and jobber should have some sort of assured guarantee of the other's financial position. Hence the Managers, a body elected by the shareholders from among themselves and distinct from the Committee, naturally insist upon the solvency of any would-be applicant for admission to the House. One of the rules, therefore, to be expected would be one fixing the terms of admission. The alteration of rules in the past to meet the necessities of business is, however, a matter of small moment and possesses but slight historical interest. Later on it will be necessary to refer to the present rules that regulate admission.

In this short history of the rise of the Stock Exchange it is easy to trace how closely its prosperity has been determined by the general



prosperity of the country. From small beginnings it has grown to its present dimensions, and there is no doubt that its members are of a very different social class from those who frequented Garraway's and Jonathan's in the middle of the eighteenth century. From a calling on which all sorts of obloquy was heaped, stockbroking has fought its way into recognition, and it has for many years numbered amongst its ranks many high-minded and capable citizens. Its public spirit is well known, its charity liberal, and the different organizations in connection with the Stock Exchange are numerous. But as they concern more the social life of the members than the subject dealt with by this book, it is not proposed to refer to them.

The history of the present building may be briefly recounted. The first subscribers put up £20,000 to erect it, and received dividends at the rate of twenty to thirty per cent. In 1854, with the alterations required to be made, and the enlargement of the building, dividends ceased, and the then proprietors had to pay up a considerable sum for the purpose of rebuilding. A subsequent extension is known as the New House, at the opening of which the late King Edward (then Prince of Wales), was present. The capital of the Stock Exchange is now £240,000, and there is a further sum of debentures amounting to £450,000. On this capital heavy dividends have been paid amounting to as much as £75 per cent. Although at present every member of the Exchange is not a proprietor, the Managers have rightly resolved that in the future every member shall be a shareholder in the Stock Exchange. This policy is undoubtedly good, although it is only fair to say that the dual system of the management of the Stock Exchange and its members by the proprietors and the committee has in the past worked exceedingly well.

In the Great War, British finance played no small part in securing ultimate victory, and in this connection may be noticed the ready and willing submission of all members of the Stock Exchange to the restrictions imposed upon them. Of the many members who went to the front some are dead, others are disabled, but all who have returned have returned with the consciousness that they did their duty in accordance with the great traditions of the Stock Exchange for patriotism and loyalty.



## CHAPTER II

### THE GOVERNMENT OF THE STOCK EXCHANGE

THE London Stock Exchange is in reality a building vested in certain proprietors and used for the purpose of carrying on a market for stocks and shares. It is not regulated in any way by charter or statute. Its management owes no duties to the public, and its business is subject to no regulations except those which, from time to time, the Committee for General Purposes think right to impose on those whom they choose to admit. Its prestige and authority depends entirely upon the reputation it has established for honest and efficient business methods.

The undertaking of the London Stock Exchange is a voluntary association of persons styled "proprietors" holding shares in a capital or stock of £240,000, represented by the freehold, leasehold, and other property of the undertaking, divided into 20,000 shares on which £12 per share was in 1875 credited as paid up. The society was originally constituted under a deed of 1802, but in 1875 became and now is governed by a deed of settlement dated 21st December, 1875 (see *Weinberger v. Inglis*, [1919] A.C. 606).

The administration of the Stock Exchange is vested in two bodies, although their functions are totally distinct. They are (1) the Managers; (2) the Committee for General Purposes.

The Managers are the representatives of the shareholders or proprietors of the Stock Exchange. They are the governing body, or Directors, and consist of nine members. Under the provisions of the two deeds the former body regulates admission moneys, has the appointment of all the officials, except the Secretary and the official assignee (who, it will subsequently be seen, are otherwise appointed), and generally manages and controls the building. The Managers are elected by the shareholders, three Managers retiring once in every five years.

Since 1904 every member elected must before exercising his privileges of membership become a proprietor by acquiring either one or three shares according as to whether he is admitted with two or three sureties.

The Committee for General Purposes consists of thirty members.

They hold office for twelve months from the 25th of March next following the date of their election. Any member of the Committee is re-eligible for election. The election of the Committee is fixed for the 20th of March in each year, but if that day happens to be a Sunday or Bank Holiday the election takes place on the following business day. The election takes place by ballot of the members. Notice of the ballot is publicly exhibited in the Stock Exchange during the fourteen days previous to the election. The names of the persons on the existing Committee willing to serve and all new candidates, with their proposers and seconders, must be publicly exhibited in the Stock Exchange during three business days previous to the ballot being held. No ballot is however taken where the number of candidates does not exceed the number of vacancies, and in such cases the candidates are deemed to be duly elected. The members of the retiring Committees remain in office until the 25th of the same month of March in which their successors are elected, and in case no election shall be made at any ballot, the retiring members remain in office for another year or until a valid election has taken place under clause 92 of the Deed of Settlement.

The following are the formalities required in the case of election. Four business days' notice previous to any ballot of intention to propose any person not already on the Committee and eligible for re-election must be given to the Secretary of the Committee in writing signed by two members. The ballot takes place by printed lists containing the names of the persons willing to serve again and of all persons so proposed, distinguishing the former from the latter. In case no election is made on the day appointed for that object, the Committee may forthwith, or any time thereafter prior to the next ordinary yearly ballot, cause a ballot to be held for such election on a day to be fixed by the Committee for that purpose and in all respects as before provided. The Committee appointed by such ballot remains in office until the 25th of March then next following, or until a valid election takes place. Every ballot for the election of the Committee for General Purposes or for supplying vacancies on the Committee must be held at the Stock Exchange, and conducted in accordance with the existing practice and usage in reference to such elections. In case of dispute as to what such practice or usage has been in any particular, the



Committee shall from time to time determine the same by resolution (Deed of Settlement, s. xii, ch. 90). For the exact wording of the rule reference should be made to the Appendix. (Rule 1.)

The qualification of members of the Committee and of voters is as follows :—Members of the Committee must have been for the space of five years immediately preceding the day of election members of the Stock Exchange. Every person on ceasing to be a member *ipso facto* vacates his seat on the Committee. Every member is entitled to vote even though he has not paid his subscription. Occasional vacancies on the Committee for General Purposes are filled up by a ballot of members held for the purpose on a day to be fixed by the Committee for General Purposes, of which seven days' previous notice has been given by the same being publicly exhibited in the Stock Exchange. Similar notice of nomination must be given as provided by clause 90 of the Deed of Settlement.

The surviving or continuing members on the Committee, notwithstanding any vacancy in their number, may act until the vacancy is filled up. Any person elected to supply an occasional vacancy in the Committee holds office for the residue of the year in which he is elected, and he then retires with the other members of the Committee.

The procedure of the Committee is regulated thus :—They may meet at such times as they shall themselves appoint, and shall determine their own quorum (not to be less than seven members actually present) and mode of procedure.

The Committee regulate the transaction of business on the Stock Exchange, and may make rules and regulations, not inconsistent with the provisions of the Deed of Settlement, respecting the mode of conducting the ballot for the election of the Committee and respecting the admission, expulsion, or suspension of members and their clerks and the mode and conditions in and subject to which the business of the Stock Exchange shall be transacted and the conduct of the persons transacting the same, and generally for the good order and government of the members of the Stock Exchange. Moreover, the Committee are entitled from time to time to amend, alter, or repeal such rules and regulations or any of them, and may make any new amended or additional rules and regulations for any of the above mentioned purposes. It will be seen from this statement of



the powers of the Committee that they are absolute, so far as any of the matters just stated are concerned. Presumably any rule made by them would be good, provided that it was not contrary to or inconsistent with the Deed of Settlement.

At the first ordinary meeting after the annual election the Committee are required to elect from amongst themselves a chairman and a deputy-chairman. They hold office for a year, that is, till the ensuing 25th of March. In case of a vacancy the appointment is to be filled up as soon afterwards as possible. In the absence of the chairman and deputy-chairman the meeting chooses its own chairman. In all cases when on a division the votes are equal the chairman has a second or casting vote.

The Secretary of the Stock Exchange, who must be a member of the Stock Exchange, is chosen at the first meeting of the Committee. He holds office during the pleasure of the Committee.

Three or more members are also required to be chosen at this meeting to act as scrutineers at elections. It is their business to report the result of the ballot to the Committee, and to the Stock Exchange.

The Committee hold their ordinary meetings every Monday at 1.15 o'clock, commencing on the first Monday after each annual election. But a special meeting may at any time be called by the Chairman or the Deputy-Chairman, or in their absence, or in case of their refusal, by any three members of the Committee. One hour's notice at least must be posted in the Stock Exchange.

One of the duties of the Committee is to see to the election of candidates and the re-election of members. Every such admission, election, and re-election is for the space of one year only, and this election takes place on and after the first Monday in March every year. This power is purely a discretionary power which is exercisable and is exercised by the Committee in a perfectly uncontrollable manner for the benefit of the Stock Exchange as a body (including both proprietors and members) and the decision of the Committee in any case or number of cases is not liable to be disputed or challenged by any individual affected thereby. The Committee is under no obligation to give to any applicant for re-election admission any notice of the grounds or reasons upon or for which the Committee are proposing to act in his case, and they are directed not to disclose or state to any person whose application they have

rejected, or to any Court or Tribunal, the grounds or reason of or for such rejection. The Committee's decision is also declared not to be liable to be brought into question before or controlled by and shall not be controlled by any Court or Tribunal. So long as they exercise their discretion in accordance with the Deed of Settlement and Rules, and do not act arbitrarily or capriciously, a Court of Law has no jurisdiction to interfere with their decision. The procedure which is to be observed is set out in Chapter III under the heading of Stockbrokers and Stock-jobbers.

Resolutions of the Committee are not valid nor can they be put into practice until confirmed, except those relating to the shutting of the House, the admission of members or clerks, the re-election of members, the re-admission of defaulters, the authorization to carry on arbitrage business, the registration of remisiers, the fixing of ordinary settling days, or the granting or refusing of special settlements and official quotations. In cases which do not admit of delay two-thirds of the Committee present must concur in favour of the immediate confirmation of the resolution, and the urgency of the case must be stated in the minutes. If a resolution is not confirmed and another resolution is substituted, the substituted resolution requires confirmation at a subsequent meeting. In all cases brought under the consideration of the Committee their decision when confirmed is final, and shall be carried out forthwith by every member concerned. Notice must be given in writing of any alteration of, or addition to, the rules, and a copy of such alteration of a rule or proposed new rule is directed to be sent to each member of the Committee. All communications to the Committee are required to be made in writing, and no anonymous letter shall be acted upon.

Members and their clerks must attend the Committee when required, and shall give such information as may be in their possession relative to any matter under investigation. The Committee have power to expel any of their own members from the Committee who may be guilty of improper conduct. The resolution for expulsion must be carried by a majority of two-thirds in a Committee specially summoned for that purpose, and consisting of not less than twelve members, and must be confirmed by a majority of the Committee at a subsequent meeting specially summoned.

The Committee have power to expel or suspend any member



of the Stock Exchange (1) who may violate any of the rules or regulations; (2) who may fail to comply with any of the Committee's decisions; or (3) who may be guilty of dishonourable or disgraceful conduct.

In addition to these powers, the Committee have also power to censure or suspend any member who in his conduct or business may act in a manner detrimental to the interests of the Stock Exchange, or who may conduct himself in an improper or disorderly manner, or who may wilfully obstruct the business of the House.

A resolution for expulsion or suspension must be carried by a majority of three-fourths of a Committee present at a meeting specially summoned and consisting of not less than twelve members, and must be confirmed by a majority of the Committee present at a subsequent meeting specially summoned and consisting of not less than twelve members, and must be confirmed by a majority of a committee present at a subsequent meeting specially summoned.

The Committee for General Purposes for the time being may in their absolute discretion and in such manner as they may think fit, notify, or cause to be notified, to the public that any member has been expelled, or has become a defaulter, or has been suspended, or has ceased to be a member, and the name of such member. No action or other proceeding shall under any circumstances be maintainable by the person referred to in such notification against any person publishing or circulating the same, and this rule shall operate as leave to any person to publish and circulate such notification, and be pleadable accordingly.

The Committee may dispense with the strict enforcement of any of the rules and regulations, but such power shall only be exercised by a committee specially convened for that purpose, and consisting of not less than twelve members, three-fourths of whom must concur in the resolution for such dispensation. The resolution must be confirmed by a majority of the Committee at a subsequent meeting specially summoned.

The policy of the Committee has always been opposed to allowing its members to resort to the Law Courts, and although, of course, they cannot interfere with non-members bringing actions against members in respect of Stock Exchange transactions, they can and do interfere with their own members going to law, and they have



by their powers of expulsion a means of preventing members seeking redress elsewhere than at their Domestic Forum. Indeed they offer to non-members, who choose to submit themselves to arbitration, the advantages of speedy justice (see Appendix No. 31). Whilst, no doubt, this is of considerable advantage to the individual litigants, yet in the long run it may be doubted whether it prevents disputes. Since decisions of the Committee are not publicly recorded, as the decisions of the Law Courts are in the volumes of the Law Reports, there is nothing to prevent the same points being raised over and over again by disputants from lack of knowledge, nor would, it may be assumed, one Committee be inflexibly bound by the decision given by another Committee in a previous year. Nevertheless in practice the decisions of previous Committees establish precedents which the Committee try to follow in exactly similar cases.

With reference to the powers of the Committee it will be seen that they possess a general jurisdiction over the management of the House and members.

The policy of keeping members of the Stock Exchange from having resort to the Law Courts is supposed to be supported by those rules which allow the Committee to suspend or expel members and forbid their resort to law except with the Committee's sanction. The following point has never been raised, but it might be raised in the event of a member, without the Committee's sanction, going to law with a fellow member as to how far the Committee, if they acted under the rule, would be guilty of contempt of court. The Courts are exceedingly jealous of attempts to interfere with their jurisdiction, and act promptly where there is any interference with witnesses, and it may be assumed that they would act promptly where the provocative cause that gave rise to the committee's jurisdiction was the seeking by the complainant of redress in the Law Courts.

Apart from the jurisdiction exercised by the Committee as a controlling body, they act in disputes between members and non-members in certain cases. The jurisdiction is referred to elsewhere, The great Stock Exchange doctrine is the inviolability of bargains. a doctrine which Committees from the earliest days have insisted on. Indeed it is difficult to see how business involving enormous sums of

money could be transacted every day if this were open to any question. Therefore, except in the rarest instances, the Committee will not interfere even to put off or annul a special settlement that is once fixed, though apparently the circumstances fully justify it, because such a proceeding would necessarily cancel a number of existing bargains. The policy of the Committee may be right or wrong from the public point of view, but it is a policy that is not likely to be altered.

## CHAPTER III

### STOCKBROKERS AND STOCK-JOBBERS

BEFORE entering into a description of the business that is carried on in a stockbroker's office it is necessary to explain what is now understood by a stockbroker. As distinguished from a stock-jobber, he is the person who buys or sells stocks and shares for and on behalf of members of the public for a commission or brokerage. The stock-jobber or dealer, on the other hand, has no relations with the public except in one or two exceptional instances. Herein lies the cardinal distinction between the two. The former owes a duty to the client who instructs him and at the same time a duty to the body of which he is a member. During the Kaffir boom it became the habit of certain jobbers to approach the company promoters and outside dealers direct, but this has since been forbidden by the rules of the Committee. The latter owes a duty to the body of which he is a member, but since he has no clients amongst the public he owes no duty to them. As will be seen afterwards, in business relations the broker and the jobber are at arms' lengths, and in the respective positions of buyer and seller. It follows that partnerships between brokers or firms and jobbers cannot exist. In fact they are forbidden. Nevertheless there are a few exceptions to this owing to some firms still being in existence that acted as brokers and bankers in the old days before the rule was made, and they are still allowed to act in the double capacity. At present the rules governing admission lay stress upon the following points in a candidate for admission : his experience, and the necessity of his being a natural born British subject. A person, who is not a natural born British subject is not eligible as a candidate for admission, or in the case of a former member, for re-election as a member of the Stock Exchange and shall not be admitted or re-elected as a member, but the Committee may nevertheless in any particular case and after consideration of the circumstances affecting such case, if in their uncontrolled and uncontrollable discretion they deem it expedient or proper so to do, admit or re-elect as a member an applicant, who, not being a natural born British subject, has altogether abandoned his foreign nationality and has been resident in the British



dominions for ten years and has been naturalized within such dominion for five years or upwards next preceding the date of his application.

The Committee are the elective body—they re-elect on the first Monday in March, or after, such members as they shall deem eligible to be members of the Stock Exchange for the year commencing on the 25th of March then instant. So long as they *bona fide* exercise the discretion conferred on them by the Deed of Settlement and the rules, and do not act arbitrarily or capriciously the Court has no jurisdiction to interfere with their decision in re-election, election, or refusal. (*Weinberger v. Inglis* [1919], A.C. 606.)

The re-elected member immediately becomes liable for the amount of his subscription and the fees fixed by the Trustees and Managers. In order to obtain re-election he must in each year address to the Secretary an application in the form No. 1 in the Appendix. A reference should be made to the form in the Appendix to the rules for the forms which are required to be used on re-election, admission, and re-admission. Their election, unless they can be shown to have acted arbitrarily or capriciously, will not be upset by the Court. Each member of a partnership is required to sign a separate letter. The form contains important features. Thus, it names the clerks, but where a new clerk or the authorization of clerks as yet unauthorized is required, a separate form must be filled up.

The subscription has to be paid to the credit of the managers within twenty-one days from the 25th of March. Where a partnership exists, only one member of the partnership need make the claim as to clerks.

Members who desire their names to appear in the published lists of brokers who are members of the Stock Exchange must state whether they intend to act as brokers. Where a member has not resigned and is not a defaulter, bankrupt, or insolvent, and has not exercised his right of nomination, but has discontinued his subscription for one year, he must be recommended for re-election by two recommenders without security, but if he has discontinued his subscription for two years he must apply for admission as a new candidate. The committee on the first Monday in March and *after* in every year proceed to re-elect such members and candidates as they shall think proper as members of the Stock

Exchange. Every such re-election or admission shall be for the term of one year only, commencing on the 25th of March then instant or last preceding the re-election or admission of any such person. On election the member becomes liable for his subscription and the fees fixed by the trustees and managers. A member who is not desirous of being re-elected in any year shall notify to the secretary his intention not to apply for re-election. Notwithstanding this notice he may apply at any time during the current Stock Exchange year on Form No. 1 in the Appendix, provided he has not exercised his right of nomination or become ineligible under Rule 26.

A candidate for admission, except candidates under Rule 29, shall be required to obtain the nomination of a member willing to retire in his favour, or of a former member, or of the legal personal representative of a deceased member. The nomination must be on one of the forms in Appendix 15. Rule 27 (1).

A candidate nominated by an existing member shall not be balloted for until the resignation of the nominating member has been accepted by the Committee.

Nominations by other than existing members must be executed and lodged with the Secretary within twelve months of the death or resignation of the member, or in the event of his discontinuing his subscription, within the current Stock Exchange year. If not so exercised, the right of nomination shall lapse.

A nominee must be eligible under these rules, and, if he is a clerk applying for admission with two sureties, he must have completed the service required by the second clause of Rule 33 before the expiry of the right of nomination.

If a nominee is rejected, a further nomination may be lodged within the prescribed period.

In the case of a deceased member, the probate of the will or letters of administration must be exhibited to the Secretary before the issue of the nomination form.

A candidate for admission must be not less than twenty-one years and must be recommended by three members. Each recommender must engage to pay five hundred pounds to the creditors of the candidate in case the latter shall be declared a defaulter within four years from the date of his admission.

A member recommending a candidate must be of not less than



four years standing, must have fulfilled all his engagements, and must state in writing that he is not and will not be indemnified. He is required to have such personal knowledge of the candidate, and of his past and present circumstances, as shall satisfy the Committee of his eligibility. (Rule 34.)

If the candidate has served as a clerk in the House or the Settling Room for four years, with a minimum service in the House of three years, previous to the lodging of his complete application form, two recommenders only are required, who must each enter into a similar engagement for three hundred pounds. A clerk of foreign birth who previously to his employment in the Stock Exchange has been engaged as Principal in any business is only eligible for admission as a member with three sureties for five hundred pounds each. (Appendix Form 5.) Rules 29 to 53 in the Appendix govern admission and re-election of members to the Stock Exchange.

A notice of each application with the names of recommenders, must be posted in the Stock Exchange at least eight days before the candidate can be balloted for.

The right of nomination is a personal one, and cannot be transferred. It cannot be exercised by a defaulter, by a person who is expelled or who ceases to be a member under Rules 30 or 173—that is, a member who is bankrupt, proved to be insolvent, or against whom a Receiving Order in Bankruptcy may have been made, or who may fail to pay the fees due to the trustees and managers, although he may not be at the same time a defaulter on the Stock Exchange. Nomination cannot be exercised by a person who ceases to be a member by reason of his failing to acquire or hold the share or shares required by Rules 42 or 45, or by any person ceasing to be a member whilst under suspension.

A member admitted without nomination is not entitled to exercise the right of nomination until after the term of the liability of his sureties shall have expired by effluxion of time; but in the event of the decease of such member prior to such time his legal personal representatives may exercise the right of nomination.

The Committee at a special meeting held in December of every year fix the number of admissions for the year, commencing the 25th of March following, open to candidates with two recommenders without nomination. These are clerks who have



completed four years' service in the Stock Exchange or Settling Room.

The resolution fixing the number of candidates to be so admitted is not valid or put in force until confirmed.

A clerk having completed four years' service on the Stock Exchange or in the Settling Room in accordance with clause 2 of Rule 33 may apply on the form, No. 16 in the Appendix, to be placed on the waiting list of candidates for election without nomination.

The names of clerks so applying shall be placed upon the waiting list in the order of application, and the list shall be posted in the Stock Exchange in December of each year.

Those within the number fixed by the Committee may be balloted for on or after the first Monday in March for the ensuing Stock Exchange year, provided that their application forms, duly signed and complete in all respects, are lodged with the Secretary at least eight days before the ballot.

A candidate, within the number fixed by the Committee, who fails to lodge a complete application form within one month from the date of his having the right to do so, shall be placed at the bottom of the waiting list, and the next in order of priority shall be entitled to lodge an application form.

The name of a clerk who ceases to have admission to the House or the Settling Room for a period of six consecutive months, shall be removed from the waiting list. (See Rule 29.)

A candidate is ineligible if he is engaged as principal or clerk in any business other than that of the Stock Exchange, or if his wife is engaged in business, or if he is a member of, or subscriber to, or is a shareholder or debenture holder in any other institution where dealings in stocks or shares are carried on; and if, subsequently to his admission, he shall become subject to any one of these objections he shall cease to be a member, upon a resolution of the Committee to that effect.

A candidate is ineligible who has been a bankrupt, or against whom a Receiving Order in Bankruptcy has been made, or has been proved to be insolvent, or has compounded with his creditors, unless he has paid 20s. in the £, and obtained a full discharge.

A candidate is ineligible who has more than once been a bankrupt or insolvent, or compounded with his creditors.

Recommenders are required to have such personal knowledge of candidates and of their past and present circumstances as shall satisfy the Committee as to their eligibility. Each recommender must state in writing that the candidate fulfils all the requirements of the Rules, particularly those of Rule 21, 30, 31, 32, and 33. That he has read the attached statement by the candidate and confirms the accuracy of the same, the length of time he has known the candidate, and that from his personal knowledge he is satisfied as to the candidate's fitness, both financially and in all other respects, to become a member of the Stock Exchange. That the candidate is free to commence business on his own account forthwith if he so desires, and that he the recommender is not and will not be indemnified. A candidate may be recommended by a firm, but not by two members of the same firm, nor by a member who is an authorized or unauthorized clerk, nor by a member whose authorized clerk the candidate may be, nor by a member whose sureties are still liable. Moreover, a member is not allowed to be a surety for more than two new members at the same time unless he takes up an unexpired suretyship, when the limit shall be three. If a member enters into partnership with or becomes authorized clerk to any one of the sureties, or if any one of his sureties ceases to be a member during his liability, he shall find a new surety for such portion of the time as shall remain unexpired, and until such substitute is provided the Committee will prohibit his entrance to the Stock Exchange.

A candidate nominated by an existing member shall not be balloted for until the resignation of the nominating member has been accepted by the Committee.

A member intending to object to the re-election of a member, the admission of a candidate, or the re-admission of a defaulter, is required to communicate the grounds of his objection to the Committee by letter previously to the re-election or ballot. The Chairman of the Committee requires every candidate to acknowledge his signature to the form of application. (See Rule 39.)

A candidate is required to state in writing whether any, and if so what, question arises in regard to his candidature under Rule 31 and 32; his personal history and occupation or employment since he came of age; whether, if elected, he proposes to act as a Broker or Dealer on his own account or in partnership; that in the event of his not going into business on his own account no



arrangement or understanding exists or will be entered into directly or indirectly between him and his recommenders ; that he will not do so or that he shall act only as a clerk during the period of their liability.

The election of new members takes place by ballot, and must be carried by a majority of three-fourths in a Committee of not less than twelve members.

If any applicant for re-election, admission or re-admission be rejected, he shall not be balloted for again before the 25th of March then next ensuing.

A member on his election shall, before exercising any of the privileges of membership, become a proprietor in the Stock Exchange, by acquiring one share in the case of a member admitted with two sureties, or three shares in the case of a member admitted with three sureties. A member requiring a share qualification who fails to obtain the same within six months, or who at any time ceases to hold the same, shall cease to be a member. As to the effect of a transfer of a share or shares see Rules 42-4.

The Secretary shall not issue an admission notice to a new member or to a member re-elected until it has been reported to him by the secretary to the trustees and managers that the new member has been duly registered as a proprietor of the required number of shares. The Secretary shall not issue a re-election notice to a member re-elected under Rules 24 or 25 who on his admission required a share qualification until it has been reported to him by the Secretary to the Trustees and Managers that the member is duly registered as a proprietor of the required number of shares. Should a member who requires a share qualification fail to obtain the same within six months, his re-election shall be cancelled.

A notice of every defaulter, applying for re-admission, shall, at the discretion of the Committee, be posted (without recommenders) in the Stock Exchange, at least twenty-one days, and the Committee shall then take the application into consideration, upon the report of a sub-committee, appointed according to Rule 45. (See Rule 43.)

If the Committee think fit, a defaulter may be re-admitted without the above notice, in any case, where upon the report of the sub-committee it is proved that all liabilities have been *bonâ fide*



discharged in full. In such case his name shall be posted as having paid 20s. in the £.

Defaulters who are declared within four years of their admission as members, and defaulters who have been rejected upon two ballots, can only be re-admitted by a majority of three-fourths on a Committee specially summoned and consisting of not less than twelve members.

A defaulter is not required to obtain a nomination before re-admission. (See Rule 28 (5).)

A defaulter who shall have been originally admitted a member after the 23rd November, 1904, and who shall have parted with share qualifications, shall on re-admission, before again exercising any of the privileges of membership, become a proprietor of one share in the Stock Exchange. A defaulter who fails to obtain his share qualification within six months of re-admission or who at any time ceases to hold the same shall cease to be a member.

The Secretary shall not issue his re-admission notice to such defaulter until it has been reported to him by the secretary to the trustees and managers that the defaulter has been duly registered as a proprietor of one share. A re-admitted defaulter who transfers the share constituting his qualification shall forthwith cease to exercise any of the privileges of membership, and shall cease to be a member upon resolution of the Committee to that effect.

Upon any application for re-admission by a defaulter, a sub-committee shall investigate his conduct and accounts; and no further proceedings shall be taken by the Committee with regard to his re-admission until the report of such sub-committee shall have been submitted, together with a statement as to the defaulter's estate, signed by himself.

The attention of the sub-committee shall be directed,

1st. To ascertain the amount of the greatest balance of securities open at any time during the account, and at the time of failure; the total amount of his business assets; the current balance at his bankers; and whether the transactions were on his own account, or on account of principals, specifying the amount of each respectively.

2nd. To ascertain the total amount of money paid to his estate, specifying the sums collected in the Stock Exchange, those received from principals, and those from the defaulter himself.

3rd. To ascertain the conduct of the defaulter preceding and subsequent to his failure, and to inquire of the official assignee whether any matter prejudicial or otherwise to the defaulter's application has transpired at any meeting of creditors, or has officially come to their knowledge elsewhere.

4th. To ascertain whether the defaulter has violated Rule 50—that is, that he had issued or retained a ticket for securities whereby losses are incurred and who is declared a defaulter on that account.

A defaulter who is bankrupt or insolvent applying for re-admission must furnish the sub-committee with all the information they require.

The re-admission of defaulters is in two classes which are distinct.

The first class comprises cases arising from the default of principals or from other circumstances where no bad faith or breach of the Rules and Regulations of the Stock Exchange has been practised, where the operations have been in reasonable proportion to the defaulter's means or resources, and where his general conduct has been irreproachable.

The second class for cases marked by indiscretion and by the absence of reasonable caution.

The decision of the Committee on the re-admission of a defaulter shall remain posted in the Stock Exchange for thirty days. (See Rule 43 (1).)

A defaulter shall not be eligible for re-admission who fails to give up the name of any principal indebted to him, or who has not within fourteen days from the date of his failure delivered to the official assignees, or to his creditors, his original books and accounts, and a statement of the sums owing to and by him, in the Stock Exchange, at the time of his failure.

A defaulter shall not be eligible for re-admission, who shall not have paid from his own resources, independently of his security-money, at least one-third of the balance of any loss that may occur on his transactions, whether on his own account or that of principals; or who, in the event of his debts being less than the amount which his sureties may be called upon to pay, shall not have refunded to the sureties one-third of the amount paid by them.

A member who issues or retains a ticket for securities (i.e., who has



bought stock for which he cannot pay, or sold stock which he cannot deliver, or has neglected to properly arrange his account), whereby loss is incurred or increased, and who shall be declared a defaulter in that account, shall not be eligible for re-admission for at least one year from the date of such default, provided it be proved to the satisfaction of the Committee that he knew himself to be insolvent at the time of issuing or retaining the ticket.

The surety of a new member, who at the time of such member's admission shall have avowed that he was not and would not expect to be indemnified, and who shall subsequently receive any indemnity, shall in the event of the new member failing within the time of his liability, be compelled to pay to the creditors any sum so received, in addition to the amount for which he originally became surety.

A former member, not a defaulter, who shall have ceased to be a member under Rule 173, or who after ceasing to be a member from any cause becomes a bankrupt, and who shall have paid 20s. in the £ may apply for re-admission with two sureties of £300 each. A notice of such application shall, at the discretion of the Committee, be posted in the Stock Exchange at least twenty-one days, and the Committee shall, after consideration of the report of the sub-committee appointed under Rule 46, proceed to ballot for his re-admission.

A member wishing to resign his membership must forward to the Secretary a letter tendering such resignation, and a copy of this letter shall be posted in the Stock Exchange for at least four weeks before the matter is entertained by the Committee.

Assuming that a candidate has been duly elected a member of the Stock Exchange, he can either carry on business as a broker or as a jobber, but he cannot act, as previously stated, in both capacities, nor can he enter into a partnership either open or secret with a broker if he is a jobber, nor with a jobber if he is a broker. If he makes up his mind to become a broker he will require to have a business office which for obvious reasons should be as conveniently near to the Stock Exchange as possible. He may also require to have a clerk or clerks as the case may be. If the new member has a large connection, and is not admitted into some partnership with some firm already established, he will require, if he intends to do justice to his business, at least one authorized clerk. He will also



require to fit up and furnish offices of his own or have the use of offices. All this requires capital, and the larger the capital a broker has, the better for him it will be ; for, however good his clients may be, he must be prepared to take a certain amount of risk. Sometimes he may have to pay differences for stock to the market against which he may have a country cheque which will require three days for collection in the ordinary course of business, or he may not be able to obtain payment for stock owing to some technical error, and not care to withhold payment from the client.

It may be convenient now to refer to the question of clerks, and deal with the Stock Exchange Rules on the subject. A clerk may be an authorized clerk, unauthorized, or a Settling Room clerk. Clerks are admitted to the House or the Settling Room with the permission of the Committee, but no clerk can be admitted unless he is seventeen years of age. A member must apply to the Committee for the admission of an authorized, unauthorized, or Settling Room clerk, and this whether he desires the admission of a clerk to the House or the Settling Room, or whether he desires the authorizing of a clerk to transact business, or the employing another member as his clerk whether employed in the House or not. Applications must be made on one of the forms—the forms 18, 19, or 20 in the Appendix. A member of the Stock Exchange can employ another member as his clerk. A member who has any arrangement for the sharing of his commission with another member must apply for his admission on Form 18 or 19 in the Appendix. A member who employs another member as his office clerk must apply for his admission as a clerk on Form 19 in the Appendix. The notes to these forms lay stress upon the necessity of the member satisfying the Committee that the clerk is of the proper age, that he has obtained a satisfactory reference from the clerk's last employer, that he has a satisfactory knowledge of the clerk's previous career, and that he would in all other respects be eligible for admission as a member. A member may apply for the admission of a defaulter as his clerk, either authorized or unauthorized, or to the Settling Room, although the defaulter may not have complied with Rule 49, but a resolution allowing such application must be carried by a majority of three-fourths of those present, but the procedure set out does not apply to a defaulter who has previously been re-admitted as a clerk. When the application is for the

admission as a clerk of a person who has previously been engaged in business out of the Stock Exchange, the name and address of such person, together with the name of the member applying for his admission, must be posted in the Stock Exchange eight days prior to the application being considered by the Committee. If the clerk has been in partnership out of the Stock Exchange, he must submit to the Committee a copy of the *London Gazette* in which the dissolution of his partnership is notified. (Appendix (19).)

The number of clerks permissible, but not necessarily allowed, to be introduced to the House, is—

For an individual member, three (one authorized) ; also two Settling Room Clerks. For a firm, five (two authorized) ; also six Settling Room Clerks.

Members may be employed as unauthorized clerks in excess of the numbers above allowed, and members may be employed as authorized clerks in excess of the numbers above allowed, with a limit of two for an individual member or four for a firm. A member employed as clerk, whether authorized or unauthorized, must not make a bargain in his own name, nor after the termination of his clerkship, if the same arises from the default of his employer, until he has obtained the permission of the Committee. A temporary clerk may be obtained in place of a clerk absent on territorial training, and a member desiring one should apply on one of the forms 21 and 22 in the Appendix.

A member who rents a seat in the Decoding Room must apply for permission to register a clerk on Form 23 (see Appendix). On this point the regulations as to registration of Decoding Room clerks connected with this Form should be referred to.

A member applying for the admission of a clerk must satisfy the Committee that the clerk is of the requisite age—an authorized clerk must be twenty-one, an unauthorized or Settling Room clerk seventeen—and he must satisfy the Committee that he would in all other respects be eligible for admission as a member. He must also be prepared to show that he has obtained a satisfactory reference from the clerk's last employer, and that he has a sufficient knowledge of the clerk's previous career.

What is known as an emergency clerk may be obtained, and a member may make written application for the temporary substitution of an unregistered clerk for a registered clerk which must



be approved by the signature of either the chairman or the deputy chairman ; but the permission holds good only until the next meeting of the Clerks sub-Committee. A member who was acting as a clerk to a defaulter at the time of default or to a person who has ceased to be a member by expulsion, or under Rule 173, or to a member under suspension, is not allowed to make a bargain in his own name, nor may he be admitted as authorized clerk to another member until he has obtained the permission of the Committee at a meeting specially summoned for that purpose. A member may apply for the admission of a defaulter as his clerk either authorized or unauthorized, or to the Selling Room, though the defaulter may not have complied with Rule 49.

A notice of such application must be posted in the Stock Exchange for at least twenty-one days, and the Committee take the application into consideration upon the report of the sub-committee appointed according to Rule 46. (Rule 15 (2).)

A resolution allowing such application must be carried by a majority of three-fourths of those present, but the foregoing procedure shall not apply in the case of a defaulter who has previously been re-admitted as a clerk.

When application is made for the admission as a clerk of a person who has previously been engaged in business out of the Stock Exchange, the name and address of such person, together with the name of the member applying for his admission, shall be posted in the Stock Exchange eight days prior to the application being considered by the Committee.

A clerk shall not be authorized to transact business until he has been admitted to the House or the Settling Room for two years, with a minimum service in the House of one year.

A list of authorized clerks, distinguishing those who are also members, and the names of their employers, must be posted in the Stock Exchange.

The authorized clerk of a dealer must not carry on business in any market other than that in which his employer deals.

A member authorizing a clerk to transact business shall not be held answerable for money borrowed by the clerk, without security, unless he shall have given special authority for that purpose.

A clerk shall not enter the House or the Settling Room, nor shall an authorized clerk do a bargain, until his employer shall



have received from the Secretary notice of his admission or authorization. (Rule 69.)

A member who may part with a clerk, or be desirous of withdrawing from an authorized clerk the permission to transact business on his account, shall give notice in writing to the Secretary, who shall forthwith communicate the same to the Stock Exchange in the usual manner.

Clerks of a deceased member may by permission of the chairman, deputy chairman, or two members of the Committee, attend to adjust unsettled accounts.

An unauthorized clerk will not be allowed to enter the House or the Settling or Checking Rooms without a blue badge worn in the lapel of the coat, and a Settling Room clerk will not be allowed to enter the Settling Room without a red badge worn in the same manner. The only badges authorized are those issued from the Secretary's office, and members are required to notify their loss to the Secretary. If a badge is lost a fine of 10s. is to be paid to the trustees and managers. A member withdrawing a clerk is to return the badge to the Secretary's office at the date when the withdrawal takes effect. When a member authorizes a clerk, or promotes a Settling Room clerk to the House, he is to return the clerk's badge as soon as the change is passed by the Committee.

From the nature of the present rules it will be seen that the policy of the Stock Exchange is to close its doors against outsiders seeking admission. To obtain membership a considerable amount of influence is now required. The number of clerks seeking admittance without nomination must always be few. At the present time the Stock Exchange is overcrowded, and there is probably no desire on the part of the Committee to increase membership. The Committee emphasize by their rule that a clerk who has served for four years as a House clerk is in their opinion a much more suitable candidate for election than one who has not had such preliminary schooling, since he may be assumed to have a knowledge of the pitfalls that would meet the ordinary beginner. It is permissible to notice how even at the present time the same names constantly recur from generation to generation, Dutch names, for instance, often indicating a descent from the financiers who first sprang into prominence about the close of the sixteenth century. In the same way the annals of the Law show a descent from

generation to generation of men bearing names celebrated for learning and advocacy—one effect of the present rules affecting admission to the Stock Exchange will probably result in demonstrating a similar state of things to a more marked degree than hitherto.

In accordance with this policy it should be noted that under its general rules the Stock Exchange will not recognize in its dealings any other parties than its own member's. Every bargain, therefore, whether for account of the member effecting it or for account of a principal, must be fulfilled according to the Rules, Regulations and Usages of the Stock Exchange. As the inviolability of a bargain is to be strictly observed, an application which has for its object an annulment of the bargain will not be entertained by the Committee except upon a specific allegation of fraud or wilful misrepresentation, or upon *prima facie* evidence of such material mistake on the bargain as in their judgment renders the case one which is fit for adjudication. It may be noted in this connection that Courts of Law will set aside contracts when they are satisfied that the parties to the alleged contract were never *ad idem*; where a contract has been made by two parties and one party has been induced to enter into it by a representation as to existing facts by the other party, which were untrue in fact, but which were not known to be untrue at the time by the party who made it, and where the contract was brought about by wilful misrepresentation amounting in law to fraud. In any case where a charge of fraud is raised it must be specifically raised in the pleadings, and the party against whom it is alleged is entitled to the fullest particulars, so that he may be in a position to meet the charge.

Apparently no provision is made in the rules by which legal advice can be obtained by the Committee as to the legal principles which they should apply in determining the question when the facts are found by them.

All disputes between members not affecting the general interests of the Stock Exchange which arise out of Stock Exchange transactions, or are connected with Stock Exchange business and including partnership disputes, must be referred to the arbitration of a member or members of the Stock Exchange; and the Committee will not take into consideration such disputes unless arbitrators cannot be found or are unable to come to a decision. The decision



of the Committee as to whether a dispute affects the *general interests*, and if so, how it shall be dealt with, shall be final. It would seem only reasonable that if it does affect the general interests all the members of the House shall have it brought to their notice. It should be noted that a member is not allowed without the consent of the Committee to attempt to enforce by law a claim arising from such a dispute, and the Committee have power to intervene in cases where the principal of a member shall attempt to enforce by law a claim against another member which is not in accordance with the Rules, Regulations, and Usages of the Stock Exchange, and to deal with such cases as the circumstances require. If a non-member prefers a claim or complaint against a member the Committee must consider whether such claim or complaint is fitting for their adjudication, and in the event of their deciding in the affirmative, the non-member must, previously to the case being heard by the Committee, sign the Form of Reference No. 31 in the Appendix. A member of the Stock Exchange is not allowed to advertise for business purposes or issue circulars or business communications to persons other than his own principals. All members shall, until further order of the Committee, state on all correspondence relating to the transaction of business on the Stock Exchange and Contract Notes :—

- (1) The name of their firm, if any ?
- (2) The names of all the partners therein.
- (3) Where the name of the member or any partner of foreign birth has been changed since 4th August, 1914, his original name in brackets after his new name.

The Committee may refuse to allow a member or firm to carry on business under a name which they consider misleading.

A broker issuing a contract note shall use such a form as will provide that the words " Member of the Stock Exchange, London," shall immediately follow the signature.

The rule against dealing either directly or indirectly for or with an official or clerk in any public or private establishment without the written consent of his employer is of great importance and must be strictly observed.

A number of rules have been made which deal especially with domestic transactions. Thus a member is not allowed to transact a private bargain with an individual member of another firm



on the Stock Exchange, such bargain being wilfully concealed from the firm. Nor may a member or authorized clerk do a bargain with a clerk, whether a member or not, for account of such clerk. Nor may a member transact business for a principal who, to his knowledge, is a defaulter to another member unless such principal shall have made a satisfactory arrangement with his creditor. Nor may a member or authorized clerk carry on business in the double capacity of broker and dealer.

A broker is not allowed to make prices or otherwise carry on the business of a dealer. He shall not carry on shunting business nor arbitrage business except as authorized under Rule 92, which provides that subject to annual authorization by the Committee a member, whether broker or dealer, may carry on arbitrage business outside Great Britain and Northern Ireland and the Irish Free State with a non-member, but a broker so authorized is not allowed to make prices or otherwise carry on the business of a dealer, and a dealer so authorized is not allowed to act as agent by executing orders for such non-member (Appendix, Form No. 32).

A broker is not entitled to receive brokerage from more than one principal on a transaction carried through directly between two principals, and each contract note shall state that the bargain has been done between non-members.

Subject to the provisions of Rule 204 (4), which should be referred to, brokerage shall be charged to the non-member who initiated the business.

When a broker receives an order from one principal to buy and from another to sell the same security and execute the two orders simultaneously with the same dealer, the prices agreed upon must be such as at the time of dealing are believed to be fair to both principals.

A broker may not put business through for another broker (Rule 89), nor may he execute an order with a non-member unless thereby he can deal for his principal to greater advantage than with a member. In such a case he shall not receive brokerage from such non-member and each contract note shall state that the bargain has been done between non-members. Business, which in fact comes under the conditions of this rule, shall not be put through a dealer's book nor shall any other procedure be adopted in order to buy such business under the provisions of Rule 89 already dealt with. It may be noticed that the word *shall* is continually

employed in the rule. The word may be merely directory or it may be imperative according to the context. Thus a member is forbidden to deal in prospective dividends as the word shall is used in this rule (Rule 93). Shall is obviously intended to be imperative and prohibits a member from so dealing.

Long options are prohibited, that is to say, a member shall not do a long option for a period beyond the seventh ensuing account-day, but it should be carefully noted that under Rule 183 (1) that a claim will not be allowed to rank against a defaulter estate drawn from a bargain or option for a period beyond the third ensuing account-day until all other claims have been paid in full; but assets arising from such transactions shall be collected and distributed among the creditors.

The Stock Exchange, unless otherwise ordered by the Committee, is closed on the 1st of January, the 1st of May, and the 1st of November, and on all Bank Holidays. In the event of the 1st of January, 1st of May, or 1st of November, falling on a Sunday, the House will be closed on the day following.

The law of partnership is the law of the land, but subject to and in addition to this the Stock Exchange has certain rules of its own which, of course, bind members. In every year, as soon as possible after the 25th of March, the Secretary makes out a list of partnerships. In case of a new or an alteration in an old partnership, the fact must be communicated to the Committee, and no partnership shall be considered as altered or dissolved until such communication is made. All notices relative to partnership must, unless otherwise ordered by a Committee specially summoned for that purpose, be signed by the parties, countersigned by the Secretary and posted in the Stock Exchange. A member who shall enter into any contract with another member for a loan of money or securities on terms contingent on or varying with the profits of the business shall be liable as a general partner. Members who enter into such contracts must notify the same as General Partnerships. A member shall not borrow money or securities from a non-member on terms that the lender shall receive a rate of interest varying with the profits or shall receive a share of the profits arising from carrying on the borrower's business. The failure of a firm dissolves the partnership, and should the members of such firm when re-admitted desire to renew the partnership,

notice of the fact must be given to the Committee in the usual way. Partnerships with non-members are prohibited, and no member of the Stock Exchange is allowed to enter into a partnership with any person who is not a member, nor must a member form a partnership during the liability of his recommenders without their written consent, such consent to be communicated to the Committee. Partnerships between brokers and jobbers are prohibited. The decision of the Committee as to what constitutes a partnership within the meaning and contention of the rules is final.

Members dealing generally together in any particular stock or shares, and participating in the result, shall be held responsible for the liabilities of each other, not only in the shares or stock in which they are jointly interested, but also in any other description of securities in which either of them may transact business, unless they forward a written notice to the Secretary specifying the particular securities in which they deal on joint account. (Form 17.)

This rule is applicable also to members allowing others to deal with their shares, stock, or capital, and participating in the result.

*Market Partnerships are only permitted between members, or firms, who each deal and settle their bargains in their own name.*

No market partnership shall consist of more than two members, or firms, nor shall such partnership be carried on in any other markets than those in which both parties are dealing.

All market partnerships must be notified to the Secretary and posted in the Stock Exchange.



## CHAPTER IV

### THE BUSINESS OF THE STOCK EXCHANGE

THE following classes of business are dealt with on the Stock Exchange—the loans of British and foreign Governments, bonds, debentures, and stock of private bodies such as Municipalities and County Councils, and the debentures, stocks, and shares of public companies, and options. It is proposed to deal with these seriatim. Reference should be made to the glossary of terms for an explanation of their meaning.

*British Government Loans and Annuities.*—These are either funded or unfunded loans. Funded loans are those which the Government are under no necessity of paying off, such as Consols, which consists of stock representing various loans now consolidated. Consols are transferable at the Bank of England and Ireland. The method of transfer is dealt with hereafter.

The unfunded debt comprises such securities as Exchequer Bonds, Treasury Bills, etc.

The Bank of England, however, administers many other funds and issues stock certificates to bearer, to the holders of the stock, with dividend coupons attached. These are bearer securities transferable by delivery.

*Foreign Government Loans* are transferable according to the particular form of security; they often take the form of bonds, which have always been considered negotiable by simple delivery. Thus, a bond issued by the King of Prussia, after evidence had been called that similar bonds circulated freely by delivery both here and in Prussia, was held negotiable—the form of the bond being that the King of Prussia and his successors bound themselves to pay the holder for the time being (*Gorgier v. Mieville*, 3 B. & C., 45). Russian, Dutch, and Danish Government securities, having been proved to be freely marketable by delivery in their own countries, were also held negotiable in this country (*Attorney General v. Movvens*, 4 M. & W., 17). In the *London Joint Stock Bank v. Simmons* (1892), A. C., 201, it has been decided that

Argentine Cedula bonds were negotiable. Lord Macnaghten said : " The Cédulas in question are foreign bonds with coupons attached, payable to bearer. Admittedly they pass from hand to hand on the Stock Exchange, and according to the evidence of the bank manager, who was not cross-examined on the point, they are dealt with as negotiable instruments. I do not see on what ground they are to be denied the quality of complete negotiability."

In the *Bechuanaland Exploration Company v. London Trading Bank* (1898, 2 Q. B., 658) the question was whether debentures which according to their tenor were payable to bearer, or when registered to the registered holder for the time being, on presentation of the debenture which contained conditions. On its being shown that the debentures by the usage of the mercantile world were treated as negotiable, they were held to be negotiable here. The case of *Crouch v. Crédit Foncier of England* (1873, L. R., 8 Q. B., 374) has in effect been overruled by *Goodwin v. Robarts* (1875), L. R. 10, Ex. 337, (1876), 1 App. Cas. 476, but, whether the instrument is an English instrument or foreign instrument, the usage necessary to support its claim to rank as negotiable must be a usage in England. In *Picker v. London & County Banking Co.* (18 Q. B. D. 515), Lord Esher, M.R., said that in order to establish such an exception to the common law rule (i.e., as to the non-negotiability) some custom of merchants obtaining in this country must be proved, or some English statute must be relied on. In *Edelstein v. Schuler & Co.* (1902, 2 K. B., 144) Bigham, J., said : " In my opinion the time has passed when the negotiability of bearer bonds, whether Government bonds or trading bonds, foreign or English, can be called in question in our courts. The existence of the usage has been so often proved and its convenience is so obvious that it must be taken now to be part of the law ; the very expression ' bearer bond ' connotes the idea of negotiability, so that the moment such bonds are issued to the public they rank themselves among the class of negotiable securities. It would be a great misfortune if it were otherwise, for it is well known that such bonds are treated in all foreign markets as deliverable from hand to hand ; the attribute not only enhances their value by making them easy of transfer, but it qualifies them to serve as a kind of international currency ; and it would be very odd and a great injury to our trade if these advantages were not accorded to them in this



country. . . I think that it is no longer necessary to tender evidence in support of the fact that such bonds are negotiable, and that the courts of law ought to take judicial notice of it."

*Foreign Scrip.*—The negotiability of foreign scrip was considered in *Goodwin v. Robarts* (1876, 1 *App. Cas.*, 476). There the Russian Government had issued a loan, and the scrip was in the following form :—

Scrip for £100 stock No. —. Received the sum of £20, being the first instalment of twenty per cent upon one hundred pounds stock, and on payment of the remaining instalments at the period specified the bearer will be entitled to receive a definitive bond or bonds for one hundred pounds after receipt thereof from the Imperial Government.

London, 1st of December, 1873.

Since the scrip was by the custom of all the Stock Markets of Europe treated as a negotiable instrument, it was held that English law would follow this custom and any person taking it in good faith obtains a title to it independent of the title of the person from whom he takes it, and, when the instalments mentioned in the scrip have been actually paid, the scrip is as much a symbol of money due and as capable of passing current as the bond itself. It was argued that the scrip was at most a promise to give a bond and not a promise to pay money, and therefore was not a security for the payment of money, but Cairns, L.C., said: "It is impossible to maintain this distinction; the whole sum of £100 has been actually advanced and paid, and the loan was carrying interest from the 1st of the previous December. There was nothing more remaining to be done on the part of the holder of the scrip and if any such holder had been asked what security he had for the advance he would have unhesitatingly pointed to the scrip."

*American Railway Securities* have also been the subject of judicial consideration. Bonds which left blanks for the name of the holder and contained an obligation on the company to pay the legal holder with an indorsement to the effect that they might be registered in the owner's name in the books of the company, after which no transfer was valid unless made in the company's books by the registered owner, although they might be discharged from the registry by transfer to bearer when they became transferable by delivery, were held negotiable (*Easton v. London and Joint Stock*



*Bank* (1887), 34 *Ch. D.*, 95, on appeal sub nomine *Sheffield v. London Joint Stock Bank*, 13 *A. C.*, 333). Bonds also payable to bearer which might be registered in the company's books, but after which no transfer was valid unless made in the company's books, have also been decided to be negotiable till so inscribed (*ibid.*). Lord Watson, in the course of his judgment in the same case, at p. 342, said : " The bonds have been held by the Court of Appeal upon the authority of *Goodwin v. Robarts*, 1 *App. Cas.* 476, to be negotiable instruments, and I see no reason to differ from that conclusion." Lord Halsbury, L.C., said : " I have said nothing upon the different character of the securities since I think it quite immaterial whether they were negotiable or not, and if the facts are as I have suggested, the banks, as holders of a negotiable security, would be in no better position by reason of the negotiability of a security as to which they had knowledge or notice that it belonged to someone else." Shares to bearer, such as American railway shares, have always been considered as negotiable on the Stock Exchange, since they pass from hand to hand. Share certificates are issued in the names of the registered holders. On the back they are endorsed with blank forms of transfer with a blank power of attorney to execute a surrender and cancellation of the certificate. These are signed by the registered holder, and when they reach a shareholder he is entitled to fill in his name and send the certificates to the office of the company for the purpose of being registered as the holder ; the old certificates are then cancelled and the new holder is registered and receives a new certificate (*Colonial Bank v. Cady*, 1890, 15 *A. C.*, 267, 285). In this case a question arose between the Colonial Bank and executors on the following facts : Executors of a registered holder had signed the endorsed forms of transfer as transferors, and delivered them to a broker who misappropriated them by delivering them to the Colonial Bank to secure advances made to himself. It was decided on the evidence, both by the law and customs of New York and London, that since the signing of the transfer was equally consistent with the intention of the executors to get themselves registered in the books of the company by means of their agent, the broker, as with instructions to sell or pledge the shares, that therefore the bank had been put upon inquiry, and had not acquired a good title against the executors. A transfer by executors both by the law and customs of both countries was not a good delivery.

It has been said that American railway shares are negotiable on the Stock Exchange, but in reality they only confer an inchoate title, since they cannot be sued upon by the holder (*Colonial Bank v. Hepworth*, 1887, 36 C. D., 36; *London and County Banking Co. v. London and River Plate Bank*, 1887, 21 Q. B. D., 535, 232).

If the holder of American shares neglects to register he must risk considerable trouble and sometimes failure to collect the dividends.

*Stock*.—Consols are stock. So are the shares of most railway companies. If the capital of a company or the amount of a loan is in one sum which is divisible—that is, you can buy or sell any portion of it—it is called stock. The chief distinctions between stocks and shares are—

(a) Shares need not necessarily be fully paid, but the amount of stock must be paid within a given time, the dates of instalments due being announced when the stock is issued.

(b) Shares can only be transferred in their entirety; stock may be divided and transferred either in stated multiples or in any required amounts.

(c) Each share is distinguished by a particular number, a requirement which does not apply to stock.

A company limited by shares may modify the conditions of its memorandum of association and convert its paid-up shares into stock.

The effect of the conversion of shares into stock is thus stated in section 43 of the Companies (Consolidation) Act, 1908—

“Where a company having a share capital has converted any of its shares into stock, and given notice of the conversion to the registrar of companies, all the provisions of this Act which are applicable to shares only shall cease as to so much of the share capital as is converted into stock; and the register of members of the company, and the list of the members to be forwarded to the registrar, shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares hereinbefore required by this Act.”

*Option Shares*.—It is a growing habit with companies to issue option shares which are transferable by deed of transfer with certificate. These represent options to take shares at a fixed price at certain date or dates.

Options under the Stock Exchange rules would not be recognized



for a period beyond the seventh ensuing account (see Rule 183 already referred to), but if a transaction in options has been carried out by a broker he could legally enforce his obligations against his client (*Marten v. Gibbon*, 33 L.T., 561). (*Infra* p. 52.)

Apart from general rules there are certain special rules dealing with the different classes of business dealt with on the Stock Exchange. Thus, there are (1) rules applicable to English, India, Corporation and Colonial Inscribed Stocks, etc.; (2) Rules applicable to securities deliverable by deed of transfer; (3) Rules applicable to securities to bearer. These will be found subsequently treated in succeeding pages.

The shares of public companies, or shares deliverable by deed of transfer, are shares in which the holder's name is required to be entered in the books of the company. These shares may be the subject of a free market, in other words, they may be current securities, in which there will be found to be no difficulty either in buying or selling. A price is always obtainable, and many will be found quoted in the list of official quotations. On the other hand, shares may not be the subject of a free market. Then they are not current securities, and a broker may often find a difficulty in buying or selling them and he may not always be able to effect this directly, and some time may elapse before business can be transacted. The last class of business to be referred to is options. An option is a form of contract by which a person, on paying what is known as option money to another, thereby acquires the right to deal with him at some future fixed date in a specified quantity of stocks or shares at a price which the parties determine at the time.

These options are of three classes. The first is the put, the right to call upon the giver of it to buy from the receiver a definite amount of stock or a definite number of shares at a fixed price. The second is the call, the converse of the former, and the third is the put and call, or the double option, which is a combination of the two.

Option dealing is a special kind of business, and affords a means of speculation with a limited liability, for if the market moves adversely, nothing is lost but the price that has been paid for the option. The option is usually at the market price of the day with an addition to cover the amount of contango accruing during the time the option is open.



The Stock Exchange rules with reference to options provide that all optional bargains must be declared at a quarter before three o'clock on the day before the contango-day for the securities in question, or on Saturday a quarter before one. If the day for the declaration of options falls upon a day on which the Stock Exchange is closed, they must be declared on the preceding business day. In the case of options done for and declared on the contango-day, the bargains, both for the firm stock and the option, are to be for the settlement on the settling-day of the following account. Among members of the House, if the course of an option is apparent, it declares itself automatically by custom. When shares or stock on which options are open are quoted ex-rights, an official price, will, on application to the secretary of the share and loan department, be fixed for the rights.

All rights in respect of options must be settled by the allowance of such valuation on the option price, unless the member who has given for the call or takes for the put shall give notice in writing, on or before the day the shares or stocks are quoted ex-rights, that he will claim the new securities and accept delivery if the option is exercised. Forward bargains and options for settlement on the account days are prohibited in all securities under the headings "British Funds."

The question of the validity of put and call options was discussed by the Court of Appeal in *Buitenlandsche Bankvereeniging v. Hildersheim* (1903, 19 T. L. R., 641 C. A.) and the conclusion was come to that it was not a gambling transaction. (See also *Sadd v. Foster* (1897), 13 T. L. R., 641 C. A.) If, however, there is a tacit understanding that the bargains should not be enforced and that the differences only should be paid, the contract would be void.

Having described the nature of the securities that are dealt in upon the Stock Exchange, it is now proposed to indicate the usual course of business on the Stock Exchange, and show how a transaction is carried out. The broker in the first instance receives an order which may arrive by letter, telegram, or telephone, or the client may call at the broker's office and there give verbal instructions. The order may be ambiguous in its terms; if it so appears, the broker should take steps where possible to clear up the ambiguity before he attempts to execute it, but if it should happen to be

ambiguous and a reasonable man could read it in the way the broker does, the responsibility for the mistake will fall on the principal for any money loss incurred in consequence (*Loring v. Davis*, 32 Ch., D. 625, following *Ireland v. Livingstone* (1872), L. R., 5 H. L., 395).

If the order is clear, the broker will take steps to execute it at once. It may now be shown how he does this. Stockbrokers during market hours deal in the House, therefore it is to the House that they betake themselves, or, if they do not go themselves, they dispatch an authorized clerk. Let it be assumed that broker X has an order to buy 100 Chartered shares at £1 10s. per share. The broker is well acquainted with his client, and has no doubt as to his position and solvency, and is anxious to execute the order. Taking his notebook with him or, as it is generally called, his jobbing-book, he enters the House. He makes his way towards the market in which Chartered shares are dealt. To the stranger the idea of a market might suggest some railed-off portion or enclosure, but not so to the broker. He knows that the House is not divided by artificial boundaries into many markets. The term "market" merely conveys to him the idea that in some particular portion of the House he will come across jobbers who deal in particular securities. Thus, the term "Consol Market" will suggest the western and old portion of the House, and thither a broker would naturally turn to execute an order in Consols. Here also he would go if he desired to deal in Colonial or India Loans, or in the loans of Municipal Corporations. Again, in another portion of the House will be found the Yankee market, where American railway shares and bonds are dealt in. In another portion the English railway dealers congregate, and so on.

Then there are markets within markets. Thus, within the Railway market will be found separate markets for the securities of different railway groups.

Some markets will consist of many jobbers, where the shares are active; other markets will consist of only a few who deal in their specialities. The object of the broker, in fact his proper business, is to discover the jobber who will make him the closest price, and not to go to a jobber who in his turn will seek another jobber to quote a price. A broker's skill will largely consist in this selection of a jobber, and here long experience will stand him in



good stead. Now to follow our particular broker X. He reaches the jobber Y who deals in Chartered shares ; the market is a very free one, and X has no difficulty in executing the order with Y fractionally under the price named by his client. The market on this occasion was favourable to his way of dealing, needless to say it is not always so. Before, however, he makes an entry of the transaction in his jobbing-book, let us see what are the customs that regulate dealing or the etiquette of the House. When a broker approaches a jobber and asks him to quote a price, the jobber names two prices—the lower at which he will buy and the higher at which he will sell. Often, however, there is a great deal of finesse exercised where large amounts are concerned. If in the result the price is satisfactory, and the broker can deal, he does so at once, declaring whether he is a buyer or a seller, broker and jobber entering the transaction in their jobbing-books, and the transaction is finally concluded.

Where large orders require placing, Stock Exchange etiquette allows the jobber to ask the broker questions, his object being to ascertain whether the broker is a buyer or a seller. This information the broker is naturally not anxious to give till the dealing price is quoted. The carrying out of these transactions requires the greatest skill and tact. One of the rules (102) applicable to bargains and the settlement of accounts makes the matter clear, for it declares that an offer to buy or sell stock, bonds, or shares at a price named is binding as to any part thereof that may be a marketable quantity, and an offer to buy or sell an amount of stock, bonds, or shares when no amount is named is binding to the amount of—

“£1,000 stock or bonds or the equivalent in foreign currency ; 100 shares of a market value of £1 and under ; 50 shares of a market value of £1 to £15 ; 10 shares of a market value of over £15 ; 100 American dollar shares.”

The justice of this rule will be apparent, because otherwise if the broker declared himself, the jobber, who thought he was a buyer when he was a seller, might decline to deal except in a very small portion of the stock. Hence necessity gave occasion for the rule, and an experience extending over many years has justified it.

Another Stock Exchange custom in dealing with large amounts



of stock is one which binds the jobber who inquires, after the deal is concluded, if the broker has any more to do, to take the rest of the order in which he has already dealt at the same price.

Apocryphal of the custom a story is told in the House of a youthful and inexperienced dealer who was bidding for stock. £5,000 stock was soon forthcoming, whereupon the bidder boldly said, "Have you any more to do, Mr. —?" The answer was unexpected, for the seller of the £5,000 immediately replied, "Young man, I sell you seventy-eight thousand," and the venturesome youth was obliged to take the lot.

As soon as the broker has executed his order, which is given and accepted orally, both jobber and broker make a note of the transaction. A jobbing-book is a notebook in its simplest form, of a convenient pocket size, divided by lines into spaces wherein are entered the details of the bargain, the client's name, in the case of brokers, the amount and name of security dealt in, and the dealer's name.

From the jobbing-book the entries are duly entered into the journal, or Day-Book, a more substantial book, which contains columns for the calculation and charges, such as brokerage and stamp fees. All bargains done are checked the following morning, and there is no doubt that the process of checking is a most desirable one. The clerks of the broker and jobber meet in the settling rooms in the basement of the House between 10.30 and 11, and there the bargain is checked as a rule without dispute, the intervention of the Committee being rarely called for. The Committee are not asked to interfere unless some question of principle involving general interests is in question. Where the clerks cannot agree, the matter is referred to the partners. In practice, however, it is unusual to find many cases of disagreement. When the bargain is checked it can be at once entered by the broker's and jobber's clerks in their respective ledgers from the journal from which entries the contracts have been written the previous night before the bargains have been checked. In the case of jobbers, of course, no contracts or brokerage charges are involved.

X's clerks, when the bargain is checked, will enter it in the Jobber's Ledger, that is, the ledger in which a record of the transaction of X with jobbers is kept. An entry will also be made

in the Principal's Ledger, from which the clients' accounts are written.

Now let us leave X for a moment to follow Y, the jobber from whom the Chartered shares are bought. Y, like X, has made an entry in his jobbing-book, which will be checked. Y's clerks then make an entry of the transaction in the Journal, from the Journal into the Ledger, and there the matter will stand till the settlement takes place. Meanwhile Y's position as jobber is this—that he has sold 100 Chartered shares to X for the account. Now it has been explained that a jobber always quotes two prices, a buying and a selling price, and the difference between the two is known as the market turn.

The art of good stock-jobbing is for the jobber to get his book even, and he will probably undo the bargain that he has just made by entering into another transaction with another jobber, who in his turn, if not on the same, on another day, will undo the transaction with him. The original order which Y has to execute will possibly pass through many hands before it finds its way to the broker who is selling 100 Chartered shares on behalf of his client.

If the jobber were able to get the whole of the jobber's turn, which he possibly could do, and undo his bargain at once, he would be in a position to calculate his profit at the end of the day. As previously explained, he undoes the bargain with another jobber. It is obvious that a broker might find such jobber No. 2 who had dealt with jobber No. 1, and have dealt with him directly. But he might be unacquainted with jobber No. 2, and therefore might have been compelled to deal with jobber No. 1. Thus, the broker who knows and can deal with the jobber who quotes the best or closest prices—since he can buy or sell at more advantage than the broker who does not know the market so well—is the most successful broker. Therefore, the test of a good broker is the one who can obtain the best prices for his clients.

The transaction between X and Y may be recorded. If recorded, the record is made on a board. Now, the method of marking is effected by either the broker or the jobber filling in one of the printed slips which are kept at the foot of the marking board. The particulars required are the name of the stock and the price at which it changed hands. This slip on being handed to the clerk in charge of the marking boards is the material on which the clerk marks the price which is subsequently quoted in the official list.



The board is the official record of the business that has been transacted during the day in quoted stock and shares. In marking bargains done in small bonds, they are denoted by an asterisk, but bargains done for an exceptional amount and a special price are marked by a double dagger. Marking is one of the safeguards of the client, for he can insist that his broker shall have the bargain marked. If the marking is irregular, it is perfectly open for other members to object on the ground that the price is outside the current quotations, and should be struck out. With the authority of the chairman, deputy-chairman, or two members of the Committee, this can be done. Complaints as to marks of business may be lodged with the Clerks of the House at any time. Objections to the quotations in the list must be lodged with the Clerks of the House not later than fifteen minutes before closing time. Reference should be made to the Appendix, Stock Exchange Rules, 165, 166, 168, and 169. It has been said that the official list consists of the prices of bargains transacted on the Stock Exchange between members at the market price. This is the only list that the Stock Exchange allows to be published. The rule states that a list of prices of English and foreign stocks, shares, and other securities permitted to be quoted shall be published under the authority of the Committee, and no list or record shall be published and sold by a member without the sanction of the Committee. The list may be divided into two parts, the first containing the record of bargains in quoted stocks and shares transacted from eleven o'clock up to half-past three o'clock. The second part after half-past three o'clock contains the closing quotations prevailing at the closing of the list. These are not official, but are collected from the statements of the leading jobbers in the particular market and are often merely nominal, since no business may have been transacted.

Sometimes a bargain is not marked immediately. It can, however, be marked later on, for the Clerks of the House may, with the concurrence of a member of the Committee, or an application signed by the buyer and the seller stating the amount, the time when, and the price at which such bargains were made, mark it. The application is filed and laid before the Committee at their next meeting.

Bargains in shares of a less value than £5 will be marked in shillings and pence in multiples of threepence; those done at



fractions of a pound being converted into shillings and pence. Bargains may be marked between 10.45 a.m. and 3.30 p.m. (1 o'clock on Saturdays), and bargains marked will be officially recorded unless specially ordered otherwise by the chairman, deputy chairman or his members of the Committee. Bargains at special prices are marked with the sign ‡. Bargains done with or between non-members Δ. Bargains done during unofficial hours or on the previous day φ.

They should be marked in the order in which they are made but the Clerk of the House may, with the concurrence of a member of the Committee, mark omitted bargains in the order in which they occurred upon an application signed by the buyer and the seller, stating the amount, the time when, and the price at which such bargains were made, and such applications shall be reported to the Committee at the next meeting. Complaints as to marks may be lodged with the Clerk of the House at any time. Objections to quotations in the List must be lodged with the Clerk of the House not later than 15 minutes before the time fixed for the closing of the House. In the first instance complaints and objections will be considered by the chairman, the deputy chairman, or two members of the Committee.

There are three courses open to a client who has instructed his broker to purchase shares. 1st, he may desire to carry over or continue the bargain; he will then instruct X, his broker, accordingly; 2nd, he may desire to take up the shares and pay for them; 3rd, he may desire to undo the bargain by selling the shares during the account.

(1) *Carrying over or continuing the account.* This is done by the aid of the jobber. X will approach Y, a jobber, and ask him if he is willing to carry over the shares. If Y is agreeable, X, on contango day, will enter into a new contract with him for the sale of the shares bought for the existing account, and also into a concurrent contract to re-purchase from him the shares at the same price for the ensuing account. The shares may have risen or fallen in value since the original bargain was made. If the shares have risen, then X will receive what is known as the difference, that is to say, the difference between the price at what the shares were bought and the making-up price. If the shares have fallen then X will have to pay on behalf of his client the difference

representing the fall to Y. As a consideration for carrying out the transaction Y will receive a *contango*, which is interest on money which the jobber has to find. The *contango* rates vary according to the state of the account in the different stocks and shares. Under ordinary conditions they are based on the value of money in conjunction with the security, but should there be an excess of bulls over bears the charge would naturally be higher, as there would be more borrowers of *money* in that particular stock than lenders. Should there be a bear account, that is, more borrowers of *stock* than lenders of *stock*, the rate would be light and might altogether disappear. This latter stringency in *stock* sometimes results in what is called a *backwardation*, that is, the bull will be able to borrow the money against the stock which he has bought in order to close the bargain for the account without having to pay any interest on it, but actually receiving a consideration for the loan of his stock or shares.

There is no need for broker X to enter into the *contango* arrangement with the jobber Y with whom he has dealt; he can close the bargain for the current account and reopen for the new with *contango* as described above with any jobber who may be willing to do the business.

In all cases the carrying over is done at the making-up price, which is fixed by the Clerk of the House, of all securities included in the Stock Exchange official list of making-up prices. A fuller explanation of these terms will be found when dealing with the business of the account.

The Clerk of the House fixes the making-up prices of all securities included in the Stock Exchange list of making-up prices by taking the actual market price at half-past eleven o'clock on each of the three days preceding the Account day. No making-up shall be binding unless at the official making-up price, or where none is fixed, at the then existing market price. In case of dispute as to the making-up price or of any omission in fixing the same, the Clerk of the House shall act upon the decision of two members of the Committee. The making-up prices so fixed shall be published in the Stock Exchange Official List of making-up prices under the authority of the Committee and subject to the rule in Appendix 33. These Regulations provide as to the inclusion of securities in the Stock Exchange Official List. This list is subject to revision at



intervals of not more than three months. Securities which are not undertaken by the Settlement Department shall only be included in the Official List of making-up prices for ordinary accounts subsequent to the first settlement upon the signed requisition of five members or firms, two of whom at least shall be brokers. Securities undertaken by the Settlement Department shall be included in the Official List of making-up prices without requisition.

The broker is sometimes a taker-in of the shares himself.

(2) Supposing that the client desires to take up the shares. It is necessary to find the actual seller of the shares which have been purchased, and this is discovered by means of the ticket system, which is further simplified by the existence of a Clearing House which deals with certain stocks and shares which are freely dealt in. As previously pointed out, the bargain may have passed through many hands before the actual broker or deliverer of the shares is found. The detailed working out of this is subsequently explained, and it is only necessary to state that the transaction is completed by the delivery of the stocks or shares, where deliverable, either at the time of or shortly after the settlement.

(3) The client may desire to sell them. A reverse transaction to that already described in the buying takes place, and according as to whether the transactions show a profit or a loss a difference will be payable to or by him. If the client carries over the stock or shares, if a bull, the making-up price may be lower than the price at which he purchased the stock or shares. A difference then becomes payable by him. On the other hand, the stock or shares may have risen in value, then the difference will be payable to him.

The whole of the system which is here described will be found fully set out with the respective rights of client, broker, and jobber subsequently in the book, but some slight sketch in the nature of an introduction is here given so that the further chapters may be more easily and conveniently followed.

Although not necessarily Stock Exchange business, brokers are so constantly called upon to advise and to apply on behalf of clients for letters of allotment in companies, that a statement of the law would appear to be useful. An application for shares is generally and usually made in writing, but it is not necessarily indispensable : a verbal application is sufficient (*ex parte Bloxam*, 33 *Beav.* 529).



In *Levita's case* (L. R., 3 Ch. 36), Levita was requested by McHenry to take shares in McHenry's name in the International Contract Co., Limited. Levita, having previously been consulted as to the legal position of the company, did so in writing as trustee for McHenry. No letter of allotment was sent to Levita, but his name was advertised as a director, and he attended a board meeting and received a fee as director. His name was put on the register as a holder of 1,000 shares. He applied to have his name struck out of the list. Sir John Rolfe, L.J., said: "In this as in the other cases there must be evidence of a contract, there must be evidence of the application being acceded to, but there is no absolute necessity for evidence that the entire contract is in writing as the parties may agree or the application may be acceded to without any letter or writing." The acceptance of the application constitutes a contract. With reference to this it may be noted that the contract is completed by the posting of a letter (*Dunlop v. Higgins*, 1848, 1 H. L. C., 381) although the letter may not reach in time owing to the default of the post.

In *Household Fire Insurance Co. v. Grant* (1879, 4 Ex. D. 216) it was decided that where a party expressly or impliedly authorizes the employment of the post as a means of communicating an acceptance, as where a proposal which is made by letter is accepted by letter, the contract is complete at the moment the letter is posted, although the person who should have received it never did in fact receive it; but delivery to a postman, however, is not posting, since a postman is not the agent of the Post Office (*London and Northern Bank, in re ex-parte Jones*, 1900, 1 Ch. 220). The rule, however, as to the revocation of an offer is not the same as in the case of acceptance. Till the party to whom it has been addressed actually receives it, even though it may have been posted to him, a withdrawal may be made by word of mouth (*Truman's case*, 1894, 2 Ch., 272).

An agent can apply for shares on behalf of a principal and if the shares are allotted to the principal he becomes a shareholder (*Hannan's Empress Co. Re Carmichael*, 1896, 2 Ch. 643; *Hindley's case*, 1896, 2 Ch. 121).

The acceptance of an allotment of shares is ordinarily evidenced by what is termed the allotment. Allotment is an unconditional appropriation to an applicant by a resolution of the directors of a

certain number of shares in response to an application. In giving advice to a client a broker should act honestly, and if he does so no liability will attach to him even in the case of his giving wrong advice to his client or principal, provided that he had exercised the usual amount of skill that a broker would exercise in the ordinary course of business, but if he conceals anything which if revealed at the time would or might have resulted in the client not following his advice, he would probably be held liable to a client who had acted upon and suffered loss through following his advice. For instance, if a broker is the holder of shares in a company, the shares of which he recommends his client to purchase, this fact should be disclosed.



## CHAPTER V

### OFFICIAL QUOTATIONS

UPON the formation of a new company and the offer for subscription of its stock or shares, a formal application has to be made to the Stock Exchange for permission to deal in the securities, for no dealings, whether for cash or for the account, will be allowed on any new issue unless allowed by the Committee or excepted from this rule (159) under Appendix 34D or 34E. It is proposed to deal with these *seriatim*. Dealing in results is not allowed. The settlement at which bargains for the account in new issues are to be completed will be announced when permission for dealings is given or by subsequent notice. Rule 161, which ran as follows : " The Committee will not allow dealings in shares or securities issued to the vendors credited as fully or partly paid until six months after the date on which permission was given for dealings in the shares or securities of the same class subscribed for by the public : but this does not necessarily apply to reorganization or amalgamation of existing companies or to cases where no public shares are issued, or to cases where the vendor takes the whole of the shares issued for cash," has now been deleted from the rules. But Rule 62 (1) still stands, that " the Committee may order the quotation in the Official List of any security of sufficient magnitude and importance." Rule 163 has also been deleted, it ran as follows : " Securities issued to vendors credited as fully or partly paid shall not be quoted until six months after the date on which permission was given for dealings in the securities of the same class subscribed for by the public, nor unless a quotation for the latter is also granted."

Applications for quotations must be made to the Secretary of the Share and Loan Department and must comply with such conditions and requirements as may be ordered from time to time by the Committee except in cases where the Committee may determine to waive one or more of such conditions or requirements. Three days' public notice must be given of every application, and a broker, a member of the Stock Exchange must be authorized to give the Committee full information as to the security and to furnish them with all particulars they may require. (Rule 162 (4).)

Before the war a Special Settlement was fixed for new issues apart from the ordinary Account Day, and a few particulars of this may be of interest. The day was usually fixed so as not to interfere with the ordinary settlement, and all dealings on the scrip or bonds of a new loan, or the shares or other securities of a new company, were contingent upon the granting of this special settlement. Although the rules and regulations are now materially altered, it has been thought advisable to mention the old practice, because a number of legal cases were decided on special settlements which may prove useful for reference.

The following documents and particulars had to be sent to the Secretary of the Share and Loan Department, when application was made for a special settlement—

#### SCRIP OR BONDS OF NEW LOANS

A specimen of the scrip or bond.

A copy of the prospectus, circular, or advertisement relating to the issue.

A statutory declaration stating

1. The amount allotted

(a) to the public,

(b) to others.

2. The distinctive numbers and denominations of each Class of Scrip or Bond.

3. The amount paid up thereon.

4. That the Scrip or Bonds were ready to be delivered.

#### SHARES OF NEW COMPANIES

The certificate of incorporation.

A specimen of the share certificate.

A copy of the prospectus, circular, or advertisement relating to the issue.

A specimen call letter.

Certified printed Copies of Contracts relating to the issue of Shares credited as fully or partly paid.

A letter from the secretary of the company stating :

1. That the Share Certificates were ready to be issued.

2. The distinctive numbers of the shares allotted

- (a) to the public
- (b) to the vendors.
- 3. Whether the Statutory Meeting had been held.
- 4. The particulars of the Company's Capital.
- 5. The nominal amount of each share, and the amount paid in cash or credited as paid on each share.
- 6. In cases where the whole of the Capital had not been issued at the time the application was made, whether the unissued shares were Vendors' Shares or were held in reserve for future issue.

#### STOCK OR DEBENTURE STOCK OF NEW COMPANIES

A specimen of the Scrip or Stock certificate.

A copy of the prospectus, circular, or advertisement relating to the issue.

A letter from the Secretary of the Company stating :

- 1. The amount allotted
  - (a) to the public
  - (b) to others.
- 2. The amount paid in cash per £100 stock.
- 3. That the Scrip or Stock was ready to be issued.

With regard to the Special Settling days in the shares of New Companies, the Secretary of the Share and Loan Department was required to give three days' public notice of any application for a Special Settling day in the shares or other securities of a new Company previously to such application being submitted to the Committee, who appointed a Special Settling day, provided that sufficient Scrip Certificates were ready for delivery.

The Committee, however, would not fix a Special Settling day for bargains in Shares or Securities issued to the Vendors credited as fully or partly paid until six months after the date fixed for the Special Settlement in the Shares or Securities subscribed for by the public; but this did not necessarily apply to reorganizations or amalgamations of existing Companies or to cases where no Public Shares were issued, or to cases where the vendors took the whole of the shares issued for cash.

Special Settlements were rarely refused by the Committee provided that the Company's papers were in order. Since bargains were made contingent on a Special Day being fixed, the effect of a refusal would



be that bargains entered into would no longer bind, since the Special Settlement in respect of which the bargains were made would be off. As a matter of policy the Committee adopted the view that Special Settlements should be hastened, therefore applications for a Special Settlement were treated separately from applications for official quotations. Fraud, it must be understood, was a ground on which the Committee might decline to grant a Special Settlement. But as bargains were considered inviolable on the Stock Exchange in the absence of fraud, the papers being in order, a Special Settlement in practice was always granted. In *Bedford v. Bagshaw* (4 H. and N. 538, 29 L. J., Ex. 59), the Committee were given false information by a director of a company as to the number of shares in a company which were allotted and paid for. The Committee, acting on this information, appointed a Special Day, and allowed the shares to be quoted in the Official list. The plaintiff, who was acquainted with the Stock Exchange requirements as to the subscription of the necessary amount of shares, subscribed for shares, believing that the shares were subscribed for. The shares subsequently proved to be of no value. He brought an action in respect of the false and fraudulent representation that had been made by the director, and he was held entitled to recover, but it is doubtful whether this decision is good law. It was criticized in *Peek v. Gurney* (1873, L. R., 6 H. L., 377) and again in *Salamon v. Warner* (1891, 64 L. T., 598; affirmed 65 L. T., 132).

If once a Special Settlement was granted the Committee had no power to revoke it.

The obtaining of a Special Settlement has on many occasions been procured by means of fraud as a preliminary to the operation known as cornering. In the *Queen v. Aspinall* (L. R., 1 Q. B. D., 73; on appeal L. R. 2 Q. B. D., 48) a description is given of the conspiracy in connection with the Eupion Gas Company. There the defendants were indicted for conspiracy, the indictments containing, *inter alia*, two counts on which the defendants were found guilty. At the trial before Cockburn, C.J., it appeared that in March, 1874, one of the defendants named Muir had promoted a company for the manufacture of gas from oil, called the Eupion Fuel and Gas Company, Limited, with a capital of 50,000 shares of £1 each. One of the defendants, C. Knocker, was cousin to G. Knocker, the secretary of the company, and he was also general manager of the Midland

Banking Co. C. Kocker applied in March, 1874, to a member of a firm of stockbrokers, and asked him to procure a Special Settling Day for the company. It was arranged that the Secretary of the Share and Loan Department should write to the Secretary of the Company for the proper documents. In reply, a certificate was sent that the number of shares applied for was 34,365, that the number of shares allotted unconditionally was 34,365, and the amount received on application 10s. a share—£17,182 10s.—that the number of shares taken by the patentee was 15,000 fully paid, that no shares were conditionally allotted, that the shares were ready for delivery, and no impediment existed to the Settlement of the Account. The pass book of the company's bankers and the allotment papers and allotment book were sent in support of these statements. There was, in fact, not a single *bona fide* application for shares, but a number of people were induced by two of the conspirators to write applications for shares on the understanding that they should not be called upon to pay them, and the shares were handed back. In order that it should appear that the allotment deposits were paid, Muir obtained an advance of £3,000 from the Midland Banking Company through the agency of C. Kocker, and from this sum the deposits were paid to the credit of the Eupion Gas Company at their banks, the money being afterwards paid back to the Midland Banking Company. The operation was repeated again and again until a sum equal to the whole amount of the deposits had been paid to the credit of the company. On the 26th of May a Special Settling Day was fixed for the 28th, and after the 28th a quotation of the shares was ordered to appear in the Official list. In April G. Kocker had entrusted a broker to sell a number of shares in the company, which he said were retained by the patentee. Part of these shares were sold for the Special Settlement, when it should be fixed. Aspinall's name was given as the vendor of certain shares. After the settling day had been fixed, in September, Aspinall and C. Kocker purchased shares to the amount of £19,000, and on non-delivery claimed to recover against the brokers. Muir was a seller of part of these shares. At the time of these transactions the whole of the shares, except three, were in Aspinall's name.

The jury found that it had not been proved that the defendants were engaged in a combination to buy or sell shares on the Stock



Exchange for the purpose of defrauding brokers, but that Aspinall, Whyte, Muir, and C. Knocker were guilty of obtaining a Special Settlement on the Stock Exchange falsely and fraudulently.

A verdict of guilty having been found on the first and second counts with leave to appeal to enter the verdict for the defendants, the case came before Cockburn, C.J., Blackburn and Field, J.J. The first count, alleging that the defendants entered into a conspiracy to induce the Committee of the Stock Exchange to grant a Settling Day and a Quotation of the shares of the company by fraudulent representation was held bad; but if it had gone on to say that the ulterior purpose of the defendants was by getting the Settlement Day and the Quotation to defraud the public it would have been good. The second count, however, which averred that the defendants had entered into a conspiracy in order to obtain a quotation of the shares in the Stock Exchange list to induce persons who should thereafter buy and sell the shares to believe that the company was duly formed and constituted, and had complied with the rules of the Stock Exchange, so as to entitle it to have its shares quoted in the Official list, was held sufficient because it would have been difficult to see how that belief, if engendered in the minds of persons buying and selling shares of the company, could have had any other effect than that of inducing them to buy and sell under circumstances in which they could not otherwise have bought and sold.

"Difficult is it," said Mr. Justice Field, "to see how the belief could have any other operation. I think the statement being that the conspiracy was to induce that belief must be taken to mean to induce that belief in order to lead persons to deal with these shares when they would not otherwise have dealt with them. Upon the whole, therefore, I come to the conclusion that this statement is sufficient." On appeal this judgment was affirmed.

The facts disclosed in this case undoubtedly justified the conviction. For the facts showed that persons were induced to take shares which they never intended to take except fictitiously, which shares were made over to the principal person dealing in the transaction, that the notices were fictitious, that the company's funds were likewise fictitious, and that the whole thing was a fiction, the object being to obtain a settlement and quotation on the Stock Exchange.



Proceedings, however, have not always been as successful as in the case of the *Queen v. Aspinall*, but the idea underlying has been more or less the same—to obtain control by cornering shares by evading the requirements of the Stock Exchange Committee, although nominally complying with them, inducing sales and compelling the bears to repurchase at heavy premiums.

The rules dealing with the Special Settlement, and especially the rule existing in the case of New Companies, that a Special Settlement in Vendors' shares should not take place till six months after the date of the Special Settlement, was one intended to safeguard the public.

In considering the question of Special Settlements, it will be noticed that the Committee required that the Articles of Association should restrain the directors from employing the funds of the company in the purchase of or on loans upon the security of their own shares. Apart, however, from this provision it has been decided that a company is not entitled to purchase its own shares. In *Trevor v. Whitworth* (1887, 12 App. Cas. 409) this question was discussed in the House of Lords. There a company had been incorporated with a capital of £150,000 in 15,000 shares of £10 each for the purpose of acquiring and carrying on the business of flannel manufacturers, and any other businesses and transactions which the company might consider in any way conducive or auxiliary thereto. A paper was carried on in connection with the business. The memorandum did not authorize the company to purchase its own shares, but two of the Articles did, Article 179 stating that "any share may be purchased by the company from any person willing to sell and at such price not exceeding the then marketable value thereof as the Board think reasonable." Article 181 stated that "shares so purchased may at the discretion of the board be sold or disposed of by them or be absolutely extinguished as they deem most advantageous for the company." A former shareholder, the company having gone into liquidation, made a claim for the balance of the price of his shares sold by him to the company, before the liquidation, not wholly paid for. It was held that the company had no power to buy its own shares.

In the course of his judgment, Lord Macnaghten said: "There remains a more serious objection still. It seems to me that if a power to purchase their own shares were found in the memorandum of

association of a limited company it would necessarily be void. There are two conditions of the memorandum—the condition defining the objects of the company and the condition defining the capital—one or both of which would be affected by such a power.”

Then he proceeds to explain why such a condition in the memorandum would be void. With reference to the articles the powers there conferred were unavailing in so far as they included purchases which were beyond the scope of the memorandum of association or contrary to the provisions of the Companies Acts. [See also *Messina Construction Company* (5 T. L. R., 68).] In *Mazetti's case* (28 W. R., 541), directors who had employed their funds in buying shares of the company were held liable personally to refund. There, however, the buying was contrary to a clause in the Company's articles forbidding the purchase by it of its shares.

In making a market with a view to obtaining a Stock Exchange quotation, the method usually employed is for the promoter to make a market through the agency of brokers and jobbers—the brokers bidding for the shares at a premium until such time as sufficient shares had been applied for by the public, the jobbers looking to obtain an allotment. As this operation occasionally resulted in a loss, and as the jobbers require to be indemnified, this was made good by the promoter.

The legality of making an artificial market in this way was tested in the cases of *Scott v. Brown and others*, and *Slaughter and May v. Brown and others* (1892, 2 Q. B., 724). There the defendants, a firm of stockbrokers were brokers to the company called the Steam Loop Company, Limited. The defendants had, previously to the issue of the prospectus, underwritten a portion of the share capital of the company, and were also holders of a number of shares. The plaintiff Scott was a promoter of the company and interested in it; the other plaintiffs were solicitors to the company. Both plaintiffs instructed the defendants to purchase shares in the company, and these they had paid for. The cause of action arose from the defendants transferring their own shares to them. The evidence consisted of numbers of letters and telegrams from which it appeared that the plaintiff had been engaged, in pursuance of an agreement with one of the defendants, in purchasing shares at a premium with the object of inducing the public to believe that there was a

real market for the shares. On hearing the evidence of the plaintiffs the Court of Appeal intimated that it appeared to disclose a criminal conspiracy of which they thought they ought to take judicial notice, and subsequently they delivered judgment.

In the course of his judgment Lindley, L.J., said: "In this case the correspondence put in evidence by the plaintiff in support of the claim he made at the trial shows conclusively that the sole object of the plaintiff in ordering shares to be bought for him at a premium was to impose upon and to deceive the public by leading the public to suppose that there were buyers of such shares at a premium on the Stock Exchange when in fact there were none but himself. The plaintiff's purchase was an actual purchase, not a sham purchase. That is true, but it is also true that the sole object of the purchase was to cheat and mislead the public. Under these circumstances the plaintiff must look elsewhere than to a court of justice for such assistance as he may require against the persons he employed to assist him in his fraud. If the claim to such assistance is based on his illegal contract, any rights which he may have, irrespective of his illegal contract will, of course, be recognized and enforced. But his illegal contract confers no rights on him (see *Pearce v. Brookes*, L. R., 1 Ex. 213). The illegal purpose of the plaintiff distinguishes this case from *Wetherell v. Jones* (3 B. and Ad. 221) and others of a similar kind. I am quite aware that what the plaintiff has done is very commonly done; it is done every day. But this is immaterial. Picking pockets and various forms of cheating are common enough, and are nevertheless illegal."



## CHAPTER VI

### THE LAW RELATING TO JOINT-STOCK COMPANIES

It should be noticed that the Stock Exchange Rules frequently refer to the Companies Acts, 1908 to 1917 inclusive. It will therefore be useful to give a short account of these, and a note of some of the cases that have been decided on particular sections of these Acts which have a bearing on and explain the Stock Exchange Rules. The first of these Acts is known as the Companies (Consolidation) Act, 1908 [8 Edw. 7, c. 69]. Sections 2 to 9 explain the meaning of a Memorandum of Association and set out the mode of forming an Incorporated Company as follows—

#### MEMORANDUM OF ASSOCIATION

Any seven or more persons associated for any *lawful purpose* may form a company and may by subscribing their names to a Memorandum of Association and otherwise complying with the requirements of the Act in respect of registration, form an Incorporated Company, with, or without, limited liability.

#### PRIVATE COMPANY

Where the Company to be formed is a private Company, two or more persons may form the Company.

#### COMPANY LIMITED BY SHARES

A Company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them is in this Act, termed a *Company limited by shares*.

#### COMPANY LIMITED BY GUARANTEE

A company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the Company, in the event of its being wound up, is termed in the Act a *Company limited by guarantee*.

#### UNLIMITED COMPANY

A Company not having any limit on the liability of its members is termed in this Act an *Unlimited Company*.

No definition is given in the Act of the words “lawful purpose.”

A *Private Company* is further defined by Section 121 as follows:

(1) “for the purposes of this Act” as “a company which by its

articles (a) restricts the right to transfer its shares, and (b) limits the number of its members (exclusive of persons who are in the employment of the Company)<sup>1</sup> to fifty, and (c) prohibits any invitation to the public to subscribe for any shares or debentures of the Company." It may, however (2) "subject to anything contained in the Memorandum or Articles by passing a special resolution and by filing with the Registrar of Companies, such a statement in lieu of prospectus as the Company, if a public Company, would have had to file before allotting any of its shares or debentures, together with such a statutory declaration as the Company, if a public Company, would have had to file before commencing business, turn itself into a public Company." (3) "Where two or more persons hold one or more shares in a Company jointly they shall for the purposes of this section, be treated as a single member."

The Memorandum that is required in the case of these Companies must comply, in the *case of a Company limited by shares*, with the requirements which are set out in Section 3. In the case of a Company which is limited by guarantee, with the matters contained in Section 4, and in the case of an unlimited Company, with the matters contained in Section 5 of the Act.

"The Memorandum must bear the same stamp as if it were a deed and must be signed by each subscriber in the presence of at least one witness who must attest the signature, and that attestation shall be sufficient in Scotland as well as in England and Ireland" (Sect. 6).

"A Company may not alter the conditions contained in its Memorandum except in the cases and in the mode and to the extent for which express provision is made in this Act." (Sect. 7.)

As to name of Company and change of name, see Section 8.

Section 9 of this Act prescribes a means by which a Company may by *Special resolution* alter the provision of its memorandum "with respect to the objects of the Company so far as may be required to enable it (a) to carry on its business more economically or more efficiently; or (b) to attain its main purpose by new or improved means; or (c) to enlarge or change the local area of its operation; or (d) to carry on some business which under existing

<sup>1</sup> The Companies Act, 1913, made the addition, "and of persons who having been formerly in the employment of the company, were while in such employment and have continued after the determination of such employment to be members of the company."



circumstances may conveniently or advantageously be combined with the business of the Company ; or (e) to restrict or abandon any of the objects specified in the Memorandum ” ; but “ (2) the alteration shall not take effect until and except in so far as it is confirmed on petition by the Court. (3) Before confirming the alteration the Court must be satisfied (a) that sufficient notice has been given to every holder of debentures of the Company and to any persons or class of persons whose interests will, in the opinion of the Court, be affected by the alteration ; and (b) that, with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined or has been secured to the satisfaction of the Court.” But the Court may, in the case of any person or a class for special reasons, dispense with the notice required by this section.

As to special resolutions for reduction of share capital, see Sections 46–56 of the Act, these resolutions are called *resolutions for reducing share capital* and explain the procedure to be followed, and the meaning of the words “ and reduced ” when added to the name of a Company.

“ The Court may make an order confirming the alteration ” of the Memorandum under Section 9 “ either wholly or in part and on such terms and such conditions as it thinks fit and may make such order as to costs as it thinks proper.” “ In exercising this discretion the Court under this Section shall have regard to the rights and interests of the members of the Company, or of any class of them as well as to the rights and interests of the creditors and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members, and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement. Provided that no part of the capital of the Company may be expended in any such purchase.” (See Sect. 9, s.s. 5) and as to procedure (see s.s. 6 and 7).

#### ARTICLES OF ASSOCIATION

In the case of a Company limited by shares there *may*, and in



the case of a Company limited by guarantee or unlimited there *shall*, be registered with the memorandum, articles of association signed by the subscribers to the memorandum and prescribing regulations for the Company (Sect. 10). The formalities which are to be complied with are set under Sect. 10 to 12 inclusive.

#### ALTERATION OF ARTICLES

Section 13 provides for the alteration of Articles by special resolutions. It declares that “ (1) subject to the provisions of this Act and to the conditions contained in its memorandum, a Company may by *special resolution* alter or add to its Articles, and any alteration or addition so made shall be as valid as if originally contained in the Articles and be subject in like manner to alteration by special resolution. (2) The power of altering Articles under this Section shall in the case of an unlimited Company formed and registered under the *Joint-stock Companies Acts*, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that those regulations are contained in the memorandum.” (As to the meaning of the term *Joint-stock Companies Acts*, see Section 285 which is set out farther on.)

Where the rights of the different classes of shares require to be varied under Sections 45 or 120, sanction of the Court must first be obtained, unless the memorandum confers powers to alter the rights.

Under Section, 120 (1) “ where a compromise or arrangement is proposed between a Company and its creditors or any class of them, or between the company and its members or any class of them, the Court may, on the application in a summary way of the Company, or of any creditor or member of the Company, or in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors or of the members of the Company or class of members as the case may be, to be summoned in such manner as the Court directs. (2) If a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members, as the case may be, present either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or the class of creditors or on the members or class of members, as the case may be, and

also on the Company, or in the case of a Company in the course of being wound up, on the liquidator and contributories of the Company. (3) In this section the expression 'company' means any Company liable to be wound up under this Act." In *re Guardian Assurance Co.* (1917), 1 Ch. 431, a case decided on this section, Mr. Justice Younger on a petition to sanction a proposed arrangement for the fusion of the Company's interest with those of a Marine Insurance Co., was asked to approve a scheme as being advantageous to the interest of the Company, but he refused to sanction it on the ground that Section 120 necessarily involved some kind of dispute or difficulty to be resolved by compromise or arrangement. On appeal this decision was reversed, the Court deciding that the scheme, though not a compromise, was an arrangement, and that there was no ground for limiting the meaning of the word "arrangement" to something analogous to an "arrangement." In *re Anglo Continental Supply Co.* (1922), 2 Ch. 723, it was held that a sale to a foreign Company may be carried out this way.

In *Brown v. British Abrasive Wheel Co.* (1919), 1 Ch. 290, a company was in financial difficulties, but two of the members were willing to provide the necessary capital if the other members would sell them their shares, if not the Company would have to be wound up. As the majority proposed doing this in their own interests and not for the benefit of the Company as a whole, the Court refused to sanction the proposed arrangement on the ground that it was not *bona fide* because oppressive to the minority, the reason apparently being that expropriation in itself, was necessarily oppressive. In *Sidebottom v. Kershaw Leese & Co.* (1920), 1 Ch. 154, a private trading Company in which the majority of the shares were held by the Directors, a special resolution was passed to alter its Articles by introducing a power for the Directors to require any shareholder who competed with the Company's business to transfer his shares at their full value to nominees of the Directors. The plaintiffs who carried on a competing business owned the minority of the shares, and had voted against the resolution, and they brought an action for a declaration that the resolution was invalid as against them. The Vice-Chancellor held that the power conferred by Section 13 was qualified by this, that a proposed alteration



capable of being enforced upon a minority of the shareholders must be within the ordinary principles of justice and for the benefit of the Company as a whole, and applying that test he held the new article was invalid. On appeal this decision was reversed, as on the evidence the resolution was passed *bona fide* for the benefit of the Company as a whole and was therefore valid. Lord Sterndale, M.R., commenting on the decision in *Brown v. British Abrasive Company* distinguished it on the ground that Astbury, J., had found as a fact in that case that the majority of shareholders, although the only alternative in the matter was a winding-up, altogether were not doing this for the benefit of the Company but for the benefit of themselves. "If that finding be right, and as to that I say nothing, it was not *bona fide*. It was not done for the benefit of the Company but for the benefit of themselves, and if that was a right finding, the conclusion at which the learned judge arrived in law would, I think, also be right." It has been decided that an abuse of the Statutory power will be restrained, and a Company will not be permitted to alter its articles in breach of a contract with an outsider. (*Allen v. Gold Reefs*, (1900), 1 Ch. 656; *British Murac Syndicate v. Alpertton Rubber Co.* (1915), 2 Ch. 186.)

Under the Companies Act, 1862, it was decided that a Company under this Act was not a common law Corporation endowed with full powers, but a Statutory Company with limited power. (*Ashbury Carriage Co. v. Riche* (1875) L.R. 7 H.L. 672; and *Attorney-General v. G.E.R. Co.* (1880) 5 App. Ca. 473.)

In the *London County Council v. Attorney-General*, (1902), A.C. 165, Lord Halsbury, referring to these two cases, said: "I think it cannot be doubted that these two cases do constitute the law upon the subject." A Statutory Corporation has limited objects, and although in many instances these may be implied, yet it is usual to express them. When they are not specifically expressed in the memorandum many will be found expressly conferred by the Companies Act, 1908.

Thus where the Memorandum and Articles were silent on the subject the question was asked: Had a Company power to issue preference or other classes of shares (1) out of its original capital; (2) or on new shares created upon an increase of capital by the Company?

It was answered no, not without altering its Articles, but there



being no implied and therefore unalterable condition of equality in the Memorandum, it followed that an alteration of the Articles could give the requisite power to issue part of the original capital as preference shares (*British and American Trustee Corporation v. Couper*, (1894), A.C. 399), but the rights of shareholders if attached by the Memorandum to a particular class of shares cannot be altered or infringed. (*Ashbury v. Watson*, 30 Ch.D., 376.) But if the rights are only conditionally attached by the Memorandum of Association, that is to say, if though specified therein they are accompanied by a clause in the Memorandum which provides for an alteration, such specification does not take effect as an unalterable condition. (*Welsbach Incandescent Gas Company re* (1904), 1 Ch. 87.) These were cases denoted before 1908, but it may be observed that now, by Section 13 of this Act which has been set out, that subject to the provision of this Act and the conditions contained in its Memorandum, a Company may, by special resolution, alter or add to its Articles. The Statutory powers and Statutory duties created by the Act are independent of the Memorandum.

#### EFFECT OF REGISTRATION OF THE MEMORANDUM AND ARTICLES OF ASSOCIATION

Under Section 14 of the Companies Act the Memorandum and Articles, when registered, bind the Company and the members thereof to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member, his heirs, executors and administrators to observe all the provisions of the Memorandum and of the Articles subject to the provisions of the Act. All money payable by any member to the Company under the Memorandum or Articles is treated as a debt due from him to the Company, and in England and Ireland is of the nature of a specialty debt.

The Memorandum and the Articles (if any) must be delivered to the Registrar of Companies for that part of the United Kingdom in which the registered office of the Company is stated by the Memorandum to be situate, and he shall retain and register them.

#### EFFECT OF REGISTRATION

On the registration of the Memorandum of a Company the Registrar certifies that it is incorporated, and if it is limited he adds

the words limited. From the date of incorporation which is mentioned in the certificate of incorporation, the subscribers of the Memorandum, together with such other persons as may from time to time become members of the Company, become a body corporate by the name contained in the Memorandum, and forthwith become capable of exercising all the functions of an incorporated Company, having perpetual succession and a Common Seal with power to hold lands, but with such liability on the part of the members to contribute to the assets of the Company in the event of its being wound up, as is mentioned in this Act. The Registration Certificate of Incorporation given in respect of any association is conclusive evidence that all the requirements of the Act have been complied with, and that the Association is a Company authorized to be registered and duly registered under this Act.

Neither before the Act of 1908, nor since, is there any power to annul a Certificate of Incorporation except by winding up the company. In *Saloman's case* (1897), *A.C. 22*, the point was raised but not dealt with, see also *Princess of Reuss v. Bos* (1871), *L.R., 5 L.H., 176*, where a company consisted of foreigners who had no intention of carrying on business in England. In this case, as the Articles contained provisions contrary to the Companies Acts, they were held to be illegal. But apparently there is no power to annul a Certificate of Incorporation by writ of scire facias or otherwise, for once a Company has registered it cannot be got rid of, the Registrar's duties being purely ministerial.

#### REGISTRAR

The term " registrar " means, when used in relation to registration of Companies, the Registrar or other officer performing under the Acts the duty of registration of Companies in England, Scotland or Ireland, or in the Stannaries as the case requires (Sect. 285).

As to the Registration Offices in England, Scotland, and Ireland, and fees payable, see Part V, Sections 243-244 inclusive.

#### COPY OF MEMORANDUM AND ARTICLES

Every member of a Company is entitled to a copy of the Memorandum and of the Articles (if any) from the company on payment of a shilling or such less sum as the Company may prescribe. A



Company making default after request is liable to a fine not exceeding £1.

As to Associations formed not for profit, see Sections 19 and 20.

#### COMPANIES LIMITED BY GUARANTEE

By Section 21 (1) In the case of a Company limited by guarantee and not having a share capital and registered on and after the 1st January, 1901, every provision in the Memorandum or Articles, or in any resolution of the Company purporting to give any person a right to participate in the divisible profits of the Company, otherwise than as a member, is void.

(2) In the purpose of the provisions of this Act relating to the Memorandum of a Company limited by guarantee, and of this section, every provision in the Memorandum or Articles, or in any resolution of any Company limited by guarantee and registered after the 1st of January, 1901, purporting to divide the undertaking of the Company into shares or interests, shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

#### DISTRIBUTION AND REDUCTION OF SHARE CAPITAL, REGISTRATION OF UNLIMITED COMPANY AS LIMITED, AND UNLIMITED LIABILITY OF DIRECTORS

Sections 22 to 56 of the Companies Consolidated Act, 1908, Part II, deal with the Distribution and Reduction of Share Capital, the Registration of Unlimited Company as Limited, and Unlimited Liability of Directors.

#### NATURE OF SHARES

As to the distribution of Share Capital it should be noticed that (1) "the shares or other interests of any member in a Company shall be personal estate, transferable in manner provided by the Articles of the Company, and shall not be of the nature of real estate. (2) Each share in a Company having a share capital shall be distinguished by its appropriate number (Sect. 22). A certificate, under the Common Seal of the Company, specifying any shares or stock held by any member shall be prima facie evidence of the title of the member to the shares or stock (Sect. 23)." As to the definition of member, the keeping of a register of members, the preparation

of an annual list of members and summary, see Sects. 24-26 inclusive. Under Section 27 "No notice of any trust expressed, implied, or constructive, shall be entered on the register or be receivable by the Registrar in the case of companies registered in England or Ireland."

#### REGISTRATION OF TRANSFEROR AND TRANSFeree

On the application of the transferor of any share or interests in a Company the Company must, under the Companies Consolidation Act, 1908 (Sect. 28), enter on the register of members the name of the transferee in the same manner and subject to the same condition as if the application for the entry were made by the transferee, and a transfer of the share or other interest of a deceased member of a Company made by his personal representative, shall, although the personal representative is not himself a member, be as valid as if he had been a member at the time of the execution of the instrument of transfer. The Secretary of the Company will require proof that the person claiming to be the personal representative is in fact so. As to Inspection of Register of Members, the company has power to close register of members for any time or times not exceeding thirty days in all, see Sects. 30 and 31. The Court on application can rectify a register. The register of members is *prima facie* evidence of any matters by the Act directed or authorized to be inserted therein (Sect. 33).

#### COLONIAL REGISTERS

By Section 34 (1). "A Company having a share capital whose objects comprise the transaction of business in a colony, may, if so authorized by its Articles, cause to be kept in any colony in which it transacts business a branch register of members resident in that colony." This is called a Colonial Register.

(2) "The Company shall give to the Registrar of Companies notice of the situation of the office where any colonial register is kept, and of any change in its situation, and of the discontinuance of the office in the event of its being discontinued.

(3) "For the purpose of the provisions of this Act relating to Colonial Registers, the term 'Colony' includes British India and the Commonwealth of Australia."



## THE KEEPING OF A COLONIAL REGISTER

By Section 35. (1) A colonial register is deemed to be part of the Companies register of members (in this and the next following section called the principal register).

(2) It shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before closing the register shall be inserted in some newspaper circulating in the district wherein the colonial register is kept, and that any competent court in the colony may exercise the same jurisdiction of rectifying the register as is under this Act exercisable by the High Court, and that the offence of refusing inspection or copies of a colonial register and of authorizing or permitting the refusal, may be prosecuted summarily before any tribunal in the colony having summary criminal jurisdiction.

(3) The Company shall transmit to its registered office a copy of every entry in its colonial register as soon as may be after the entry is made, and shall cause to be kept at its registered office duly entered up from this a duplicate of its colonial register, and the duplicate shall for all purposes of this Act be deemed to be part of the principal register.

(4) Subject to the provisions of this Section with respect to the duplicate register, the shares registered in a colonial register shall, be distinguished from the shares registered in the principal, and no transaction with respect to any shares registered in a colonial register shall, during the continuance of that registration, be registered in any other register.

(5) The Company may discontinue to keep any colonial register, and thereupon all entries in that register shall be transferred to some other colonial register kept by the Company in the same colony or to the principal register.

(6) Subject to the provisions of this Act any Company may by its Articles, make such provisions as it may think fit respecting the keeping of colonial registers.

STAMP DUTIES IN CASE OF SHARES REGISTERED IN  
COLONIAL REGISTERS

In relation to these the following provisions have been made—

- (a) An instrument of transfer of a share registered in a colonial register is deemed to be a transfer of property situated

out of the United Kingdom, and unless executed in any part of the United Kingdom is exempt from British Stamp duty.

- (b) On the death of a member registered in a colonial register the shares of the deceased member shall, if he died domiciled in the United Kingdom, but not otherwise, be deemed, so far as relate to British duties, to be part of his estate and effects, situate in the United Kingdom, for, or in respect of which probate, or letters of administration is, or, are to be granted, whereof an inventory is to be exhibited and recorded, in like manner as if he were registered in the principal register. (Sect. 36.)

#### ISSUE AND EFFECT OF SHARE WARRANTS TO BEARER

(1) A Company limited by shares or so authorized by its Articles may, with respect to any fully paid shares or stock, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares or stock therein specified and may provide by coupons or otherwise for the payment of the future dividends on the shares or stock included in the warrant in this Act, termed a share warrant.

(2) A share warrant shall entitle the bearer thereof to the shares or stocks therein specified, and the shares or stock may be transferred by delivery of the warrant.

(3) The bearer of a share warrant shall, subject to the Articles of the Company, be entitled on surrendering it for cancellation to have his name entered as a member on the register of members ; and the Company shall be responsible for any loss incurred by any person by reason of the Company entering in its register the name of a bearer of a share warrant in respect of the shares or stock therein specified without the warrant being surrendered and cancelled.

(4) The bearer of a share warrant may, if the Articles of the Company so provide, be deemed to be a member of the Company within the meaning of this Act, either to the full extent or for any purposes defined in the articles, except that he shall not be qualified in respect of the shares or stock specified in the warrant for being a director or manager of the Company in cases where such a qualification is required by the articles.



(5) On the issue of a share warrant the Company shall strike out of its register of members the name of the member then entered therein as holding the shares or stock specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars—

(i) The fact of the issue of the warrant.

(ii) A statement of the shares or stock included in the warrant distinguishing each share by number.

(iii) The date of the issue of the warrant.

(6) Until the warrant is surrendered the above particulars shall be deemed to be the particulars required by this Act to be entered on the register of members ; and on the surrender, the date of the surrender must be entered as if it were the date at which a person ceased to be a member. (Sect. 37.)

#### FORGING, PERSONATION, UNLAWFUL ENGRAVING OF PLATES, ETC.

Section 38 prescribes penalties for personation, unlawful engraving of plates, alteration or forging of share warrants or coupons, etc.

#### POWER OF COMPANY TO ARRANGE FOR DIFFERENT AMOUNTS BEING HAD ON SHARES

A Company, if so authorized by its articles, may do any one or more of the following things, namely—

(1) Make arrangements on the issue of shares for a difference between the shareholders in the amounts and terms of payments of calls on these shares.

(2) Accept from any member who assents thereto the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up.

(3) Pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others. (Sect. 39.)

#### POWER TO RETURN ACCUMULATED PROFITS IN REDUCTION OF PAID-UP SHARE CAPITAL

(1) When a Company has accumulated a sum of undivided profits which, with the sanction of the shareholders, may be distributed among the shareholders in the form of a dividend or bonus,

it may by special resolution return the same or any part thereof to the shareholders in reduction of the paid-up capital of the Company, the unpaid capital being thereby increased by a similar amount.

(2) The resolution shall not take effect until a memorandum showing the particulars required by this Act in the case of a reduction of share capital has been produced to and registered by the Registrar of Companies, but the other provisions of this Act, with respect to reduction of share capital, shall not apply to a reduction of paid-up share capital under this Section.

(3) On a reduction of paid up capital in pursuance of this Section any shareholder, or any or more of several joint shareholders, may, within one month after the passing of the resolution for the reduction, require the Company to retain, and the Company shall retain accordingly the whole of the money actually paid on the shares held by him, either alone or jointly with any other person which, in consequence of the reduction, would otherwise be returned to him or them, and thereupon those shares shall, as regards the payment of dividend, be deemed to be paid up to the same extent only as the shares on which payment has been accepted by the shareholders in reduction of paid-up capital; and the Company shall invest and keep invested the money so retained in such securities authorized for investment by trustees as the Company may determine, and on the money so invested or on so much thereof as from time to time exceeds the amount of calls subsequently made on the shares in respect of which it has been retained, the Company shall pay the interest received from time to time on the securities.

(4) The amount retained and invested shall be held to represent the future calls which may be made to replace the share capital so reduced on these shares, whether the amount obtained on sale of the whole or such proportion thereof as represents the amount of any call when made, produces more or less than the amount of the call.

(5) On a reduction of paid-up share capital, in pursuance of this Section the powers vested in the directors of making calls on shareholders in respect of the amount unpaid on their shares shall extend to the amount of the unpaid share capital as augmented by the reduction.



(6) After any reduction of share capital, the Company shall specify in the annual list of members required by this Act, the amounts retained at the request of any of the shareholders in pursuance of this Section, and shall specify in the statements of account laid before any general meeting of the Company the amount of undivided profits returned on reduction of paid-up share capital under this Section. (Sect. 40.)

A COMPANY LIMITED BY SHARES HAS POWER TO ALTER ITS  
SHARE CAPITAL

(1) *A Company Limited by Shares*, if so authorized by its Articles, may alter the conditions of its memorandum as follows (that is to say) it may (a) increase its share capital by the issue of new shares of such amount as it thinks expedient; (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares. (c) Convert all or any of its paid-up shares into stock and reconvert that stock into paid-up shares of any denomination. (d) Subdivide its shares or any of them into shares of smaller amount than is fixed by the memorandum, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share, shall be the same as it was in the case of the share from which the reduced share is derived. (e) Cancel shares, which at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The powers conferred by this Section with respect to subdivision of shares must be exercised by special resolution.

(3) "Where any alteration has been made under this Section in the memorandum of a Company, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration." A Company making default in complying with this provision is liable to a fine not exceeding £1 for each copy in respect of which default is made, and every director or manager, knowingly and wilfully authorizing or permitting the default, to a like penalty.

(4) A cancellation of shares in pursuance of this Section is not deemed to be a reduction of share capital within the meaning of the Act. (Sect. 41.)

### NOTICE TO REGISTRAR OF CONSOLIDATION OF SHARE CAPITAL, CONVERSION OF SHARES INTO STOCK, ETC.

Where a Company having a share capital has consolidated or divided its share capital into shares of larger amount than its existing shares, or converted any of its shares into stock or reconverted stock into shares, it must give notice to the Registrar in conformity with the Section. (Sect. 42.)

### EFFECT OF CONVERSION OF SHARES INTO STOCK

Where a Company having a share capital has converted any of its shares into stock and given notice of the conversion to the Registrar, all the provisions of the Act which are applicable to shares only shall cease as to so much of the share capital as is converted into stock; and the register of members of the Company and the list of members to be forwarded to the Registrar shall show the amount of stock held by each member, instead of the amount of shares and the particulars relating to shares hereinbefore required by the Act. (Sect. 43.)

### NOTICE OF INCREASE OF SHARE CAPITAL OR OF MEMBERS

When a company has increased its share capital beyond the registered capital, whether its shares have or have not been converted into stock, it must give notice to the Registrar within fifteen days after the passing, or in the case of a special resolution, the confirmation of the resolution authorizing the increase. Where a Company not having a share capital has increased the number of its members beyond the registered number, notice must be given to the Registrar within fifteen days after the increase was decided on or took place. This must be recorded by the Registrar.

The penalty for a default in complying with the requirements of the Section is five pounds for every day the default continues. Every director and every manager who knowingly and wilfully authorizes or permits the default is liable to the like penalty. (Sect. 44 (1).)

### INSPECTION OF DOCUMENTS

Any person may inspect the documents kept by the Registrar on payment of such fees as may be appointed by the Board of Trade, not exceeding one shilling for each inspection. And any person may require a certificate of the incorporation of any Company,



or a copy or extract of any other document, or any part of any other document, to be certified by the Registrar on payment for the certificate, certified copy, or extract, of such fees as the Board of Trade may appoint, not exceeding five shillings for a certificate of incorporation and not exceeding sixpence for each folio of a certified copy or extract, or in Scotland for each sheet of two hundred words.

#### APPLICATION OF ACT TO COMPANIES FORMED AND REGISTERED UNDER FORMER COMPANIES ACTS

Section 245 deals with the application of the Act to Companies existing at the passing of the Act which were formed under *former Companies Acts*.

#### COMPANIES EXISTING AT THE PASSING OF THE ACT, FORMED AND REGISTERED UNDER FORMER COMPANIES ACTS

This Section which comes within Part VI of the Act declares that in the application of the Act to existing Companies it shall apply in the same manner, in the case of a limited Company, other than a Company limited by guarantee, as if the Company had been formed and registered under this Act as a Company limited by shares ; in the case of a Company limited by guarantee, as if the Company had been formed and registered under the Act as a Company limited by guarantee, and in the case of a Company other than a limited Company as if the Company had been formed and registered under this Act as an unlimited Company, provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the Company was registered under the Joint-stock Companies Acts or under the Companies Act, 1862. Section 246 enacts that this Act "shall apply to every Company registered but not formed under the Joint-stock Companies Acts or the Companies Acts, 1862, in the same manner as it is hereinafter in this Act declared to apply to Companies registered but not formed under this Act, provided that reference, express or implied, to the date of registration, shall be construed as a reference to the date at which the Company has registered under the Joint-stock Companies Acts or the Companies Acts, 1862, as the case may be." It also applies (Sect. 247) to every unlimited Company registered in pursuance of the Companies Act, 1879, as a limited Company, in the same manner as it applies to an

unlimited Company registered in pursuance of this Act as a limited Company, provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the Company was registered as a limited Company under the Companies Act, 1879, 42 and 43 Vict. c. 76.

A Company registered under the Joint-stock Companies Acts may cause its shares to be transferred in manner hitherto in use, or in such other manner as the Company may direct (Sect. 248).

#### COMPANIES AUTHORIZED TO REGISTER UNDER THIS ACT

Section 249 (1) of the Act provides that subject to certain exceptions and provisions (i) any company consisting of seven or more members which was in existence on the 2nd of November, 1862, including any Company registered under the Joint-stock Companies Acts, and (ii) any Company formed after that date whether before or after the commencement of this Act in pursuance of any Act of Parliament other than this Act or of letters patent, or being a Company within the Stannaries or being otherwise duly constituted by law and consisting of seven or more members, may at any time register as an unlimited Company, or as a Company limited by shares, or as a Company limited by guarantee, and the registration shall not be invalid by reason that it has taken place with a view to the Company being wound up.

##### 2. Provided as follows—

(a) A Company which has the liability of its members limited by Act of Parliament or letters patent and not being a Joint-stock Company as defined by Section 250 (see *infra*) is not entitled to register under this Section; (b) likewise a Company which has the liability of its members limited by Act of Parliament or letters patent may not register in pursuance of this Section as an unlimited Company or as a Company limited by guarantee. (c) A Company that is not a Joint-stock Company as defined by Section 250 (see *infra*) may not register in pursuance of this Section as a Company limited by shares.

A Company registered under the Companies Act, 1862 (25 & 26 Vict. c. 89), may not be registered in pursuance of this Section (Sect. 249, s.s. 4).

(d) A Company which is entitled to register under Section 249 cannot register without the assent of a majority of such of its members



as are present in person, or by proxy, (in cases where proxies are allowed by the regulations of the Company) at a general meeting summoned for that purpose. (e) Where a Company not having the liability of its members limited by Act of Parliament or letters patent is about to register as a limited Company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person, or by proxy, at the meeting. (f) Where a Company is about to register as a Company limited by guarantee the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the Company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the Company contracted before he ceased to be a member, and of the costs and expenses of winding-up, and for the adjustment of the rights of the contributories amongst themselves such amount as may be required not exceeding a specified amount. 3. In computing any majority under this Section when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the Company.

#### DEFINITION OF JOINT-STOCK COMPANY

A Joint-stock Company is defined by Sect. 285 of the Act. As far as relates to the registration of companies as companies limited by shares, a Joint-stock Company means "a Company having a permanent paid-up or nominal share capital of fixed amount divided into shares also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons; and such a Company when registered with limited liability under the Act shall be deemed to be a Company limited by shares." (Sect. 250.)

#### LIABILITY OF BANK OF ISSUE

As to the liability of a bank of issue in respect of its notes (see Sect. 251), the requirements for registration by Joint-stock Companies and for companies other than Joint-stock Companies, the authentication of statements of existing companies and sundry provisions, see Sects. 252-266 inclusive.

#### WINDING-UP OF UNREGISTERED COMPANIES

Part VIII of the Companies Consolidation Act deals with the winding-up of unregistered companies (Sects. 267-273 inclusive).

## COMPANIES ESTABLISHED OUTSIDE THE UNITED KINGDOM

Another important class of Companies are those which are incorporated outside the United Kingdom, but which establish a place of business within the United Kingdom. For these special rules have been made under Part IX of the Act by Sections 274 and 275. Within a month from the establishment of a place of business within the United Kingdom they must file with the Registrar of Companies : (a) A certified copy of the Charter, Statutes, or memorandum and articles of the Company or other instrument constituting or defining the constitution of the Company, and if the instrument is not written in the English language a certified translation thereof : (b) A list of the Directors of the Company : (c) The names and addresses of some one or more persons resident in the United Kingdom, authorized to accept on behalf of the Company service of process and any notices required to be served on the company ; and in the event of any alteration being made in any such instrument, or in the Directors, or in the name and addresses of any such persons as aforesaid, the Company shall within the prescribed time file with the Registrar a notice of the alteration. As to the further requirements applying to such Companies (see s.s. (2), (3), (4), (5), (6), and (7) of Section 274).

Section 275 provides that a Company incorporated in a British possession which has filed with the Registrar of Companies certain documents and particulars specified in paragraphs (a), (b), and (c) of subsection (1) of Sect. 274, shall have the same power to hold lands in the United Kingdom as if it were a Company incorporated under this Act.

## COMPANIES FOREIGN INTERESTS ACT

The Companies (Foreign Interests) Act, 1917, 7 & 8 Geo. 5, c. 18, prohibits the alteration of Articles restricting foreign interests in Companies, except with the consent of the Board of Trade by declaring that—

“ 1. (1) Where any provision in the Articles of Association of a registered Company is designed to restrict or limit or has the effect of restricting or limiting the proportion or amount of the capital of the Company or of the voting power in the Company or of the control upon the Board of the Company, which may be held or exercised by or on behalf of aliens or is otherwise designed to



restrict or limit or has the effect of restricting or limiting the interests or authority of aliens in the Company or the control of the Company by aliens, an alteration of that provision shall not be of any effect notwithstanding anything in any other Act, until it has received the written consent of the Board of Trade.

“(2) The decision of the Board of Trade as to whether an alteration of a provision requires the consent of the Board under this Act or not shall be final and conclusive.

“(3) This Act applies to any regulations or provisions in the nature of regulations affecting an incorporated Company not being a registered Company which can be altered by the Company in the same manner as it applies to the Articles of Association of a registered Company.

“(4) In this Act the expression, registered Company, means a Company as defined by Section 285 of the Companies (Consolidation) Act, 1908; and the expression ‘alien’ includes any body corporate not incorporated in some part of His Majesty’s dominions and any class of aliens.”

By Section 2 of this Act (Companies Foreign Interests) the following provisions apply to every Company in whose Articles of Association is contained any provision such as mentioned in Section (1) of this Act.

“(1) A resolution for the voluntary winding-up of the Company shall be of no effect unless the Board of Trade, in its discretion, authorizes or ratifies it by a written consent.

“(2) The Court which has jurisdiction to wind up the Company may, in its discretion, refuse to make a winding-up order.

“(3) In the exercise of its discretion the Board of Trade, or the Court, as the case may be, shall be guided by the consideration whether the winding-up is *bona fide*, with a view to the discontinuance of the undertaking, or is with a view to continuing the undertaking free from any restrictions or limitations, such as are mentioned in Section 1 (1) of this Act which are contained in the Company’s Articles of Association, or any of such restrictions or limitations.

“(4) The Board of Trade in giving consent, or the Court in making a winding-up order, as the case may be, may impose such terms or conditions for giving effect to this Act as it thinks fit.”

## CHAPTER VII

### TERMS THAT ARE IN USE UPON THE STOCK EXCHANGE

**A or Deferred Stock.**—Stock or shares which do not entitle the holder to any dividend upon them until the claims of prior shareholders, preference or ordinary, have been satisfied. Founders' shares are often of this kind. By the Regulations of Railways Acts railway companies have special powers granted to them, under certain conditions, for converting their ordinary stock into two classes—preferred ordinary or deferred ordinary.

**Accepting Stock.**—The act of signing the transfer book by the buyer of inscribed stock.

**Account (the).**—In each month there are two accounts: the period varies from eleven to nineteen days. These are fixed by the committee. Each settlement covers four days: (1) the Contango Day, (2) the Ticket Day, (3) Intermediate Day, and (4) the Account Day, Pay Day, or Settling Day as it is variously called.

**Account Day.**—Also called Pay Day or Settling Day. On this day, and the day following, the actual delivery of securities commences at 10 o'clock, and the payment by the purchaser also takes place. Differences are also paid and received.

**Ad Valorem.**—An *ad valorem* stamp duty is a duty payable in respect of certain documents, and varies with the value of the subject matter dealt with by the document. The duty is charged by the Inland Revenue on all deeds conveying property, contracts, etc.

**Allotment.**—The act of allotting or distributing stock, shares, debenture stock, or bonds in a joint-stock company in response to applications for the same or in pursuance of contracts already entered into with regard to them. A Letter of Allotment conveys the information as to the amount of stock or shares allotted, and as to the sum payable by the applicant on allotment. When a new issue is made, the capital is usually payable in instalments—the deposit or application money and calls at intervals—to all of which the applicant is bound to subscribe. The dates on which the payments are to be made are prescribed in the prospectus of the loan or company where a prospectus has been issued. Formerly,



nothing was required in the allotment of shares beyond the elements which go to the formation of a simple contract, viz., application, allotment, and communication to the applicant within a reasonable time. The consequence of this was that many companies went to allotment with an inadequate capital. Now, by the Companies Acts 1908 to 1917 (Sect. 85), certain restrictions have been enforced as to allotments. (1) No allotment may now be made of any share capital of any company offered to the public for subscription unless the following conditions have been complied with, namely: (a) the amount (if any), fixed by the Memorandum or Articles and named in the prospectus as the minimum subscription upon which the Directors may proceed to allotment; or (b) if no amount is so fixed and named, then the whole amount of the share capital so offered for subscription, has been subscribed, and the sum payable on application for the amount so fixed and named, or for the whole amount offered for subscription has been paid to and received by the Company.

(2) The amount so fixed and named and the whole amount is to be reckoned exclusively of any amount payable otherwise than in cash, and is in this Act referred to as the "minimum subscription."

(3) The amount payable on application on each share shall not be less than 5 per cent of the nominal value of the share.

(4) If the foregoing conditions have not been complied with on the expiration of forty days after the first issue of the Prospectus, all the money received from applicants for shares must be repaid to them without interest, and, if repayment is not made within forty-eight days after the issue of the Prospectus, the directors of the company will be jointly and severally liable to repay that money with interest at 5 per cent per annum from the expiration of the forty-eighth day. Provided that a Director will not be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part.

(5) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(6) This Section except subsection (3) thereof, does not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

(7) In the case of the first allotment of share capital payable

in cash of a Company which does not issue any invitation to the public to subscribe for its shares, no allotment shall be made unless the minimum subscription (that is to say) :

(a) The amount (if any) fixed by the Memorandum or Articles and named in the statement in lieu of prospectus as the minimum subscription upon which the Directors may proceed to allotment, or (b) if no amount is so fixed and named, then the whole amount of the share capital other than that issued or agreed to be issued as fully or partly paid up otherwise than in cash, has been subscribed and an amount not less than 5 per cent of the nominal amount of each share payable in cash has been paid to and received by the Company. This subsection does not apply to a private Company or to a Company which has allotted any shares or debentures before the 1st of July, 1908.

An application for allotment is an offer by contract and may therefore be withdrawn at any time before the allotment is made and communicated to the applicant. The posting of the Letter of Allotment is an acceptance of the offer to take shares, and a withdrawal of an application which arrives after the posting of the Letter of Allotment, even though posted and sent before the posting of the acceptance, is too late.

The posting of the Letter of Allotment binds the applicant, and it is no answer if the applicant repudiates the contract that he never received the Letter of Allotment if in fact the letter was posted.

The Letter of Allotment will inform the applicant of the number of shares allotted to him. Where the nominal amount of the allotment is less than £5 a stamp duty of one penny is imposed ; for greater amounts the duty is sixpence.

By Section 86 (1) "An allotment made by a Company to an applicant in contravention of the provisions of the last foregoing section shall be voidable at the instance of the applicant within one month after the holding of the Statutory Meeting of the Company and not later, and shall be so voidable notwithstanding that the Company is in course of being wound up."

(2) "If any director of a Company knowingly contravenes or permits or authorizes the contravention of any of the provisions of the last foregoing section with respect to allotment, he shall be liable to compensate the Company and the Allottee respectively



for any loss, damages, or costs which the Company or the Allottee may have sustained or incurred thereby : provided that proceedings to recover any such loss, damages, or costs, shall not be commenced after the expiration of two years from the date of the allotment."

By Section 88 (1) "whenever a Company limited by shares makes any allotment of its shares, the Company shall within one month thereafter file with the Registrar of Companies : (a) a return of the allotments stating the number and nominal amount of the shares comprised in the allotment, the names, addresses, and descriptions of the Allottees, and the amount (if any) paid or due and payable on each share ; and (b) in the case of shares allotted as fully or partly paid-up or otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment, together with any contract of sale, or for services, or other consideration in respect of which that allotment was made, such contracts being duly stamped and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(2) Where such a contract as above mentioned is not reduced to writing the Company shall within one month after allotment file with the Registrar of Companies the prescribed particulars of the contract stamped into the same stamp duty as would have been payable if the contract had been reduced to writing, and those particulars shall be deemed to be an instrument within the meaning of the Stamp Act, 1891 (54 & 55 Vict. c. 39), and the registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under Section 12 of that Act.

(3) If default is made in complying with the requirements of this section, every director, manager, secretary, or other officer of the Company who is knowingly a party to the default, shall be liable to a fine not exceeding fifty pounds for every day during which the default continues.

Provided that in case of default in filing with the Registrar of Companies within one month after the allotment any document required to be filed by this Section, the Company, or any person liable for the default, may apply to the Court for relief, and the Court, if satisfied that the omission to file the document was accidental or due to inadvertence, or that it is just and equitable to grant relief, may make an order extending the time for the

filing of the document for such period as the Court may think proper."

In Section 87 the word "Provisional" is used. This means that the contracts which are made before the date at which a Company is entitled to commence business are to be treated as if they contained a provision that they shall not be binding on the Company unless and until the Company becomes entitled to carry on business. If a Company never becomes entitled to carry on business the contracts which it has entered into never become binding. (*Clinton Claim* (1908), 2, ch. 515.)

**Allottee.**—The person to whom shares in some public company are allotted by a formal Letter of Allotment.

**Amortization.**—Signifies the redemption of bonds and shares by means of annual drawings from a sinking fund, or the complete extinguishment of a loan by a single payment out of some special fund set aside for that purpose. Usually the interest on such bonds withdrawn is added to the sinking fund, thereby increasing the next amount amortized. The repayment occasionally takes place by drawings at par or sometimes by purchase in the open market. Usually amortization takes place once or twice a year.

**Application Form.**—The form on which application is made for shares in a public company or loans. A receipt attached to it is signed by the banker to whom the application form is sent, and it is returned to the applicant as evidence that the application money has been paid. Later on the other receipts and the allotment letter are exchanged for Bonds or Share Certificates.

**Application Money.**—The money sent on application made for shares in a company or a loan.

**Arbitrage.**—A term applied on the English Stock Exchange and the French Bourse to the calculation of the relative simultaneous values of any particular stock on the market, in terms of the quotations on one or more other markets, and to the business formed on such calculations. In the strict sense arbitrage may be defined as a traffic consisting of the purchase or sale on one Stock Exchange, and simultaneous or approximately simultaneous resale or re-purchase on another Stock Exchange of the same amount in the same stocks or shares. Foreign Government Bonds and American shares are the subjects of arbitrage dealings. The rate of exchange becomes in such dealings the arbiter between these respective



centres. Thus, a London arbitrage dealer finds a stock dealt in on the Paris Bourse lower in the London market than in Paris. He accordingly buys in the London market, and sells them through the Paris dealer, who divides the profits with the London arbitrage dealer in accordance with arrangements that may be made between them.

Notification to the Committee must be made by any member or firm who wishes to act as an Arbitrage dealer.

**Authorized Clerks.**—Clerks who are authorized, according to the rules, by the Stock Exchange Committee to transact business on behalf of their principals on the Exchange.

**Averaging.**—Term used on the Stock Exchange to denote the operation of buying or selling stock, to reduce the average loss upon an original bargain when the stock has moved against the operator. Thus, if £500 of stock is bought at 90 for the rise, the buyer paying £450 for it, and the stock falls to 84, the buyer can buy an equal amount of stock at 84. He then has the stock at 87. In the event of a rise he can then clear his purchase at a little over 87, so avoiding a loss.

**B Stock or Preferred Stock.**—That portion of the company's ordinary stock which ranks first for a fixed dividend before the A or deferred stock benefits.

**Backwardation.**—Also termed Back. There is usually a backwardation when the speculative sales have been in excess of the floating supply of stock, consequently the bears, in order to arrange their accounts at the settlement, are obliged to pay back in order to borrow the stock instead of receiving interest on their money, which they practically advance against the stock. It is in a sense the penalty that a bull clique is able to impose upon the bear when sales in excess of the stock on the market have been made.

**Balance Certificate.**—When only a portion of his shares is sold by a holder who possesses a single certificate for the lot, the company in receiving the deed of transfer and the certificate make out a certificate for the shares transferred and a second certificate is made out for the balance which is retained.

**Banging a Market.**—Openly offering securities at decreasing prices with a view to lowering the prices.

**Bargain.**—As between members of the Stock Exchange, a contract.

**Bear.**—A term applied on the Stock Exchange to a person who, having sold stock or shares which he does not hold, is anxious that there should be a fall in the stock or shares, so that by the arrival of settling day he may be able, owing to the fall of a price, to buy them at a lower price and so realize a profit.

**Bidding.**—When a jobber is desirous of procuring stock or shares instead of seeking out another jobber, he makes an open or public bid in the House for the purpose of obtaining the stock or shares which he requires. As the bidding is the offer to purchase it is the converse of offering, which is an offer to sell.

**Bond.**—The term is applied to certain securities issued by foreign Governments and commercial corporations. These are either of a like nature to our own Government securities, or, in the case of commercial bonds, to what in England are known as debentures. Bonds bear consecutive numbers for the purpose of record and identification. They also have coupons attached due at stated dates. On a coupon becoming due the holder of the bond detaches it and presents it to the agents of the loan for payment. These bonds, both by American and English law, are analogous to promissory notes and negotiable in the same way. A *bona fide* holder for value is unaffected by want of title in the vendor, and is presumed to act in good faith—gross negligence would not prove *mala fides*. Trust bonds are issued to bearer; some, however, may be registered in the name of the holder, leaving the coupons to bearer. The rules which deal with American, British and Colonial Treasury and Colonial Bonds will be found elsewhere in the Rules and Regulations of the Stock Exchange.

**Bonus.**—A special allowance, gift, or premium to the shareholders of a company over and above the ordinary dividend. In this form the extra dividend, which a bonus substantially is, does not constitute a precedent.

**Books Closing.**—At certain dates, which are generally made known beforehand, the books of most companies are closed to the registration of transfers. This is the common proceeding before dividends are paid, so that it frequently happens that a buyer of stock or shares cannot be registered in time to get his name on the books as a shareholder before the dividend is paid. In such cases the broker must claim it from the seller of such stock or shares, or if delivery of such stock or shares is not made before the closing



of the books he is entitled to deduct the dividend from the payment against them.

**Boom.**—A period of extraordinary activity with a rising tendency in a market or in markets.

**Brokerage.**—The remuneration or reward paid to a broker for carrying out the sale of shares. It almost invariably takes the form of a commission per share or percentage of the price the subject matter of the contract. Usually, in the case of shares, a graduated scale is charged in accordance with the price. With stock it is a percentage either on the amount of stock dealt in or on the amount of money realized or invested. The minimum scale of commissions will be found set out in detail in Appendix No. 39.

**Brokers' Contract Notes.**—The documents signed by brokers and sent to their principals. These bear contract stamps on the following scale—

Where the value of the Stock or marketable security

Is	£5 and does not exceed	£100	6d.
exceeds	£100	£500	1/-
„	£500	£1,000	2/-
„	£1,000	£1,500	3/-
„	£1,500	£2,500	4/-
„	£2,500	£5,000	6/-
„	£5,000	£7,500	8/-
„	£7,500	£10,000	10/-
„	£10,000	£12,500	12/-
„	£12,500	£15,000	14/-
„	£15,000	£17,500	16/-
„	£17,500	£20,000	18/-
„	£20,000		£1

**Bucket Shop.**—A slang term applied to the offices of outside brokers. The dealings of outside brokers are not regulated by the Rules and Regulations of the Stock Exchange. Members of the Stock Exchange are not allowed to advertise for business purposes or to issue Circulars or Business Communications to persons other than their own principals.

Persons who advertise as Brokers or Share Dealers are *Not*

Members of the Stock Exchange or in any way under the control of the Committee.

Members issuing Contract Notes are required to use such a form as will provide that the words "Member of the Stock Exchange, London," shall immediately follow the Signature.

A List of Members of the Stock Exchange who are Stock and Share Brokers may be seen at the Bartholomew Lane Entrance to the Bank of England, or obtained on application to the Secretary to the Committee of the Stock Exchange, Committee Room, the Stock Exchange, London, E.C.2.

**Bull.**—A term applied on the Stock Exchange to a person who buys stock or shares in the hope that there will be a rise in their value before settling day. A stale bull is one who has held on for some time without an opportunity of realizing a profit.

**Bull Account.**—Is an account where there is an amount of stock open in a market against speculation purchases. An excess of speculative sales would produce a bear account.

**Buying-in and Selling-out** are expressions that will be found frequently used. If a stock, bond, or share is not delivered within the time limits fixed by the Committee, the buyer can give an order to buy in against the jobber. Likewise, if a seller does not receive a name in order to complete a sale he can sell out. There are certain officials who are known as the officials of the Buying-in and Selling-out Department, who conduct the buying-in and selling-out. They are appointed by the Committee for general purposes, and they must effect the buying-in or selling-out publicly. The method adopted in buying-in or selling-out is for the purchaser through his broker to give an order to the official department to buy in or sell out, and the broker gives directions to the official department accordingly; but bonds, shares, or other securities shall not be bought in whilst they are known to be out of the control of the seller for the payment of calls or the receipt of interest dividends or bonus, and the Committee on being applied to will fix a day on which they may be bought in. The Committee, moreover, have a rule giving power to suspend the buying in of securities when circumstances appear to them to make such suspension desirable in the general interest, and the liability of intermediaries continues during such suspension unless otherwise determined by the Committee. They also possess a general power



(Rule 20) to dispense with the strict enforcement of any of the rules and regulations. The rule, however, is of somewhat doubtful validity, although passed to meet certain difficulties which arose and were decided in the *Union Corporation v. Charington* (1902, 8 Com. Cas. 99), and *Benjamin v. Barnets* (1903, 19 T.L.R. 564).

**Call.**—This expression may be used in three senses. Thus, it may represent the demand made by directors to the shareholders of a company to pay up the amount of their contributions to the company, the contribution being a portion of the unpaid amount of new shares. It may be used to express the demand made by a liquidator of a company on the shareholders or contributories in a winding-up. It is also a form of option in use on the Stock Exchange. See **OPTION**.

**Call Money.**—Money lent by brokers and others to bill-brokers at an agreed rate of interest for repayment at a moment's notice.

**Call of More.**—The right to call at a certain date an equal amount of stock to that which has just been bought.

**Carrying Over.**—A term applied to the arrangement by which parties to a Stock Exchange bargain defer payment or delivery by continuing the transaction into the next account. There are fixed settling days on the Stock Exchange, and the carrying over from one to the other involves allowances, contango or backwardation being paid or received. A bull of stock would pay a contango, while a bear would receive.

**Certification.**—This is a memorandum made by the Secretary of the Share and Loan Department of the Stock Exchange or by the secretary of a company to a deed of transfer stating in effect that a transferor of stocks or shares or his broker has lodged with the Secretary of the Share and Loan Department, or with the secretary of the company, the certificate relating to such stocks or shares.

**Checking, or Checking Bargains.**—The Stock Exchange house clerks meet every morning to compare the bargains made by their principals on the previous day.

**Clearing House.**—An institution somewhat similar to that instituted by bankers and railways, its object being to obviate the necessity for multitudinous deliveries of stocks and shares, and passing of tickets. Since all these deliveries and payments are to

the members of a limited circle, the business being confined to transactions between members of the Stock Exchange, the object is effected by taking an account of the transactions, striking a balance, and making this the subject of delivery or payment as the case may be. The Clearing House does not trouble itself with stocks or money : its dealings are with balance sheets and tickets. By means of the Clearing House the number of hands through which stock passes on pay day and tickets on ticket day is reduced to a minimum. Only a proportionately small number of stocks and shares are cleared.

**Close to Close.**—A price made by jobbers when dealing, signifying  $3\frac{3}{4}$ d. or  $\frac{1}{8}$  either side of a price. For instance,  $\frac{1}{8}$  to  $\frac{1}{8}$  close to close means 1s.  $6\frac{3}{4}$ d. to 2s.  $2\frac{1}{4}$ d., at which prices the jobber would be prepared to buy or sell.

**Coming Out.**—A term used in connection with the sale of stocks or shares for the time when the issue of certificates is made.

**Commission.** The charge made by a Broker for transacting his principal's business.

By Section 89 (1) of the Companies (Consolidation) Act, 1908, a Company has power "to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the Company or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the Company if the payment of the commission is authorized by the Articles and the commission paid or agreed to be paid does not exceed the amount or rate so authorized, and if the amount or rate per cent of the commission paid or agreed to be paid is—

"(a) In the case of shares offered to the public for subscription disclosed in the prospectus ; or

"(b) In the case of shares not offered to the public for subscription disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and filed with the Registrar of Companies, and where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice.

"(2) Save as aforesaid, no Company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance, to any person in consideration



of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the Company, or procuring or agreeing to procure subscriptions whether absolute or conditional for any shares in the Company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the Company or to the contract price of any work to be executed for the Company, or the money be paid out of the nominal purchase money or contract price or otherwise.

“(3) Nothing in this Section shall affect the power of any Company to pay such brokerage as it has heretofore been lawful for a company to pay, and a vendor to, promoter of, or other person who receives payment in money or shares from a Company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the Company, would have been legal under this Section.”

By Section 90, “where a Company has paid any sums by way of commission in respect of any shares or debentures or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed, or so much thereof as has not been written off, shall be stated in every balance sheet of the Company until the whole amount thereof has been written off.”

**Committee.**—The Stock Exchange Committee for general purposes.

**Consideration, or Consideration Money** is the amount named in a transfer of registered stock as being paid by the buyer to the seller. The amount often differs from that which is in fact received by the seller owing to a subsequent sale made by the buyer. The Stamp Act requires in such cases that the consideration money paid by the sub-purchaser shall be the one inserted in the deed as regulating the *ad valorem* stamp.

**Consolidated Annuities.**—A term applied to the consolidation or amalgamation of various annuities into one common debt. These are the  $2\frac{1}{2}\%$  Annuities.

**Consolidation.**—Combining several issues of stocks or shares and changing them into one uniform security.

**Consols.**—A combination of the term consolidated funds and consolidated stock. The term Consols is applied exclusively to the  $2\frac{1}{2}\%$  consolidated stock redeemable on or after 5th April, 1923.

**Contango.**—The charge made for carrying over or continuing

a bargain from one fortnightly account to another. The seller of the stock, or whomsoever the contango is arranged with, charges the buyer of the stock a rate of interest for the use of the money employed in holding over the stock into the next settlement. The interest or charge varies with the rate of the money market, or with the market conditions in that stock. Thus, to give an example, if A desires to carry over a stock through a broker, the broker will apply to a dealer who has the money to lend or may possibly even require the stock. The transaction takes the form of the purchase of the stock by the dealer, or if the dealer was the original vendor, the repurchase of the stock. The price paid is the making-up price. The stock is then repurchased from the dealer at the same price with the addition of the charge or contango. For the purposes of rough calculation 1d. in the £ for a 14 day a/c is 10% per annum.

**Continuation.**—Also known as carrying over. See CARRYING OVER.

**Corner.**—This word signifies the operation of speculators or a syndicate of speculators by means of which they obtain the whole or the greater part of floating stock. The speculators in a company or syndicate are then in a position to dominate the market in the shares. Those who have sold the shares which they do not possess, that is, the bears, are then forced to buy back at the price that the speculators or bulls allow them. The bears are then said to be cornered. If the bulls keep a tight hold on the market and raise the prices so that the bears are obliged to pay heavily for securing them they are then said to be squeezing the bears. When the bears are successful in quickly depreciating values, it is spoken of as a bear raid.

**Cumulative Preference Stock and Shares.**—Where the guaranteed dividend of securities cannot be paid in any one year or series of years the dividend accumulates till it can be paid. Such accumulated dividend is entitled to payment before any dividend is paid either on the preference or on the ordinary shares in any succeeding year, the revenue for any year being first applied to payment of dividend for the current year and then to payment of the arrears, commencing with those of the nearest years.

**Cum Dividend.**—When a price is quoted that includes a dividend either just declared, about to be declared, or perhaps lately paid, it is said to be "cum dividend." Stocks and shares are officially quoted



ex dividend, and until such official notification is made all bargains are "cum." With shares of mining and commercial companies they are quoted ex dividend on the account day after the dividend has been paid; so it is possible that even after having received a dividend that a seller would sell his shares cum dividend and would therefore have to pass on whatever he has received from the company to the buyer of his shares. Did he not do so he would practically receive the dividend twice over for it is included in the cum dividend price, which is then said to be "full of dividend."

**Cum Drawing.**—This term is used when bonds are dealt in at or near the time when a drawing takes place. It means that the securities are sold with any benefits that may arise from the drawing, and if the bonds are drawn for repayment at par, or at premium, the buyer receives the profit.

**Cum New.**—**Cum Rights.**—When the buyer has the right to claim any new shares or new stock which are about to be issued in respect of present holdings, he is said to deal cum new. New shares or new stock are often issued by companies increasing their capital. The offer is not infrequently made to the existing shareholders in the first instance. As such shares sometimes command a premium in the open market, shareholders often sell their right to the allotment by signing a letter of renunciation in the buyer's favour, by which means the former would secure the premium on the new shares without incurring any liability with respect to them. The original shares, if dealt in and sold with the right to claim the allotment of the new shares, would be sold cum new or cum rights.

**Dealer.**—The term is applied to a jobber.

**Debenture Bond.**—A security given by a joint-stock company for money raised in addition to the capital subscribed by the shareholders. In form it is a charge or mortgage issued by a company bearing a fixed rate of interest and either repayable within a fixed term of years or irredeemable during the existence of the company. Debentures may be divided into two classes: in the first class may be put those debentures which give a holder a security by way of mortgage upon the property or assets of a corporation. In the second class may be put those which give no such security. The first may be defined as secured, the second as unsecured debentures.

The following is a special form for transferring a Debenture Bond—

**I**

in consideration of the Sum of

paid to me by

**Do** hereby transfer to the said

certain

Executors, Administrators, and Assigns,  
number

made by

to

bearing date the \_\_\_\_\_ day of \_\_\_\_\_  
for securing the sum of \_\_\_\_\_  
and interest, and all my right, estate, and interest, in and to the money  
thereby secured on the property and securities thereby assigned.

**In Witness** whereof I have hereunto set my Hand and Seal

this \_\_\_\_\_ day of \_\_\_\_\_  
One Thousand Nine Hundred and \_\_\_\_\_

in the Year of our Lord,

Signed, sealed, and delivered, by the above-named

\_\_\_\_\_ in the presence of

\*SIGNATURE }  
OF WITNESS } \_\_\_\_\_

Address \_\_\_\_\_

Occupation \_\_\_\_\_

Signed, sealed, and delivered, by the above-named

\_\_\_\_\_ in the presence of

\*SIGNATURE }  
OF WITNESS } \_\_\_\_\_

Address \_\_\_\_\_

Occupation \_\_\_\_\_

Seal

Seal.

**NOTE.**—The Consideration money set forth in a transfer may differ from that which the first Seller will receive, owing to sub-sales by the original Buyer; the Stamp Act requires that in such cases the Consideration money paid by the Sub-purchaser shall be the one inserted in the Deed, as regulating the *ad valorem* Duty; the following is the *Clause* in question:

"Where a person, having contracted for the purchase of any Property, but not having obtained a Conveyance thereof, contracts to sell the same to any other Person, and the Property is, in consequence, conveyed immediately to the Sub-purchaser, the Conveyance is to be charged with *ad valorem* Duty in respect of the consideration owing from the Sub-purchaser." [54 & 55 Vict. cap. 39 (1891), Section 58, Sub-section 4.]

#### Instructions for executing Transfers.

\* When a transfer is executed out of Great Britain it is recommended that the Signatures be attested by H.M. Consul or Vice-Consul, a Clergyman, Magistrate, Notary Public, or by some other Person holding a public position—as most Companies refuse to recognize Signatures not so attested. When a Witness is a Female, she must state whether she is a Spinster, Wife, or Widow; and if a Wife she must give her Husband's Name, Address, and Quality, Profession or Occupation. The Date must be inserted in Words and not in Figures.



Debentures constitute a floating charge, that is, the assets of the corporation are charged so long as they remain in the company's possession, but the existence of a debenture does not prevent the alienation of the assets—so long as the charge remains a floating charge. New assets may take the place of old assets which are alienated, and these become the subject of the charge. On the debenture becoming payable the debenture-holders, if not paid off, are entitled to seize all the assets of the corporation. Debentures may also be further classified as : (1) Debentures payable to bearer ; (2) Debentures payable to a registered holder ; (3) Debentures payable to a registered holder but with interest coupons payable to bearer ; (4) Debentures payable to bearer, which can be placed on a register and which can at any time be withdrawn from it. The conditions of the debenture are endorsed on it—very often on the back. Registered debentures are expressed to be paid to the registered owner ; where a change of ownership takes place they must be transferred as shares or stocks, but usually on a special form ; the instrument of transfer also requires to be registered. This entails the payment of the transfer stamp duty. The title to debentures to bearer passes by delivery, although on issue they require stamping at the rate of £1 per cent on the amount secured by them. The stamp duty on bearer bonds differs in accordance with the date of the bond and the Stamp Acts in operation at various times.

For the greater security of debenture-holders the property of the corporation is frequently conveyed by way of mortgage to trustees to hold in trust for the holders of debentures. This deed is called the covering or trust deed. Where such a deed exists the debentures should contain a condition incorporating its terms by reference.

Debentures must be entered in a company's register, but they do not require registration as bills of sale.

It has been decided that a good title is acquired by the holder of debentures to bearer, even against the rightful holders. In *Bechuanaland Exploration Company v. London Trading Bank, Limited* (1898, 2 Q. B., 658), the secretary of the company, in fraud of the plaintiffs, took certain debentures from a safe and pledged them to the defendants. The defendants proved that it was the usage of the mercantile world and the Stock Exchange to treat debentures as negotiable instruments transferable by mere delivery. On this

point they succeeded as against the plaintiffs, who claimed to recover from them the value of the debentures. In *Edelstein v. Schuler & Co.* (1902, 2 K. B., 144), debenture bonds were stolen by one of the plaintiff's clerks, and handed by him to a Bradford broker, who sold them through defendant's stockbrokers, carrying on business on the London Stock Exchange, to jobbers either for cash or the account. When sold the bonds were handed over by the Bradford broker to the defendants, to be handed over to the jobbers. The proceeds were sent to the Bradford broker, who handed them to the clerk. The defendants acted with perfect *bona fides*. It was decided that the debenture bonds were negotiable instruments transferable by mere delivery. In the course of his judgment, Mr. Justice Bigham said: "In my opinion the time has passed when the negotiability of bearer bonds, whether Government bonds or trading bonds, foreign or English, can be called in question in our courts. The existence of the usage has been so often proved and its convenience is so obvious that it must be taken now to be part of the law; the very expression 'bearer bond' connotes the idea of negotiability, so that the moment such bonds are issued to the public they rank themselves amongst the class of negotiable securities. It would be a great misfortune if it were otherwise, for it is well known that such bonds are treated in all foreign markets as deliverable from hand to hand; the attribute not only enhances their value by making them easy of transfer, but it qualifies them to serve as a kind of international currency; and it would be very odd and a great injury to our trade if these advantages were not accorded to them in this country."

**Debenture Stock.**—A security given by a joint-stock company for money raised in addition to the capital subscribed by the shareholders. In form it is a charge or mortgage issued by a company bearing a fixed rate of interest, and either repayable within a fixed term of years or irredeemable during the existence of the company. Like all other stock, debenture stock is negotiable either in odd amounts or multiples of £1 or £10, and in this respect may be seen the difference between this and debenture bonds, which are only as a rule transferable in their entirety. The objects being to secure identification, a holder of debenture stock is a creditor of a company, the security being the assets.

**Defaulter.**—A defaulter is a member of the Stock Exchange



publicly declared to be unable to fulfil his engagements. A person declared a defaulter ceases to be a member. (See **HAMMERED**.)

**Differences.**—The cash balance that remains open between two firms, when all the stock and shares in which they have dealt together during the account has been settled either by the Clearing House by tickets or contango, is known as a difference. It is thus the balance between the price of the original bargain and the making-up price at which the account is adjusted.

**Discount.**—When the selling or market price is lower than the par price the stock is said to be at a discount. Thus, if a share on which £100 has been paid has a market value of £98 it is at 2 per cent discount.

**Either Side.**—A quotation “either side” of a certain price means making a  $\frac{1}{18}$  price  $\frac{1}{32}$  either side of a given quotation. For instance, “either” side of £1 would be 19s. 4½d., 20s. 7½d.

**Equipment Bonds.**—An Equipment Bond is one issued to provide funds for new rolling stock, cars, locomotives, etc., and are secured on the Railroad’s rolling stock. These bonds are short dated bonds and mature serially.

**Ex all.**—When these words are added to the quotations of the price of any stock or shares, they mean that the dividend, any bonus, return of capital, or right to claim new stock or shares is retained by the seller.

**Ex Coupon.**—Without the interest coupon.

**Ex Dividend.**—Means without the dividend that may be due or paid. When a stock is sold it is presumed, until the stock is quoted ex dividend, for which certain rules are recognized, that any dividend owing upon it is carried over with the sale to the buyer, and it is then sold cum dividend.

**Face Value.**—The value of a security as evidenced by the imprint upon its face.

**Floaters.**—Bearer securities accepted as security for loans.

**Founders’ Shares.**—The shares granted to or subscribed for by the originator or originators of a joint-stock company. The shares are few in number, but in the event of the company being successful they may become of very considerable value. They usually rank to receive a large share in the profits of the business after the ordinary stock has received a stipulated dividend. The rights of holders of founders’ shares are generally provided for in the Articles or Memorandum of Association. Such shares are not now common.

**Gilt-edged Securities.**—Securities which are considered to be absolutely safe and sound.

**Hammered.**—When a member cannot meet his engagements, one of the waiters of the Stock Exchange announces the failure, rapping three times on his box with a mallet. The member is then said to be hammered. (See **DEFAULTER.**)

**Identification.**—The identification of the seller on the transference of stock at the Bank of England by a recognized broker or authorized member of the House.

**Inscribed Stock.**—Stock for which the inscription in the Bank of England books is the sole title.

**Interest Warrant.**—**Dividend Warrant.**—A form of cheque used for making payments of interest to the holders of registered securities.

**Interim Dividend.**—A dividend made pending the declaration of the annual dividend, which is sometimes called the final dividend. The interim dividend is usually made at the end of the first half-year.

**Investment Stocks.**—Stocks which are usually the subject of selection by the buyers as permanent investments.

**Investor.**—A purchaser of stock who intends to pay for it, as distinguished from a speculator.

**Joint Account.**—When a joint responsibility with another Stock Exchange firm is declared, this is known as a joint account.

**Joint-stock Companies Acts.**—Means the Joint-stock Companies Act, 1856; the Joint-stock Companies Acts, 1856, 1857; the Joint-stock Banking Companies Act, 1857; and the Act to enable Joint-stock Banking Companies to be formed on the principle of limited liability, or any one or more of these Acts as the case may require: but does not include the Act passed in the eighth year of the reign of Her Majesty Queen Victoria, chapter one hundred and ten, intituled An Act for the Registration, Incorporation, and Regulation of Joint-stock Companies. (Sect. 285, Companies (Consolidation) Act, 1908.)

**Letter of Regret.**—A notice by directors to a would-be subscriber for shares or stock in a company that they are unable to allot him any.

**Letter of Renunciation.**—A form, by signing which a shareholder, who is by reason of his holding entitled to additional or new shares, informs the directors that he does not intend to subscribe for them himself but nominates someone else.

**Limit.**—An order given to a broker by a client, or given by a broker to a jobber, to buy or sell at a definite price.



**Limited Market.**—Where there is a difficulty of doing business freely.

**Making-up Price.**—A price fixed by the Clerk of the House about noon on Contango and Ticket Days for the purpose of arranging for the carrying over.

**Margin.**—The margin on a Loan account is the difference between the amount of the Loan and the total value of the securities, which must be kept up by the borrower in event of any depreciation in value of the securities.

**Market.**—The dealers in different classes of securities congregate together in the Exchange, forming what is known as a market. Thus, there is the Consol, the Home Railway, Foreign, American, and the Mining and Miscellaneous Markets ; subdivisions of these exist, such as the miscellaneous Mining, Kaffir, Rhodesian, West African, and West Australian Markets. Markets are spoken of as being dull, heavy, active, feverish, etc., according to the conditions prevailing.

**Middle, or Middle Price.**—If a stock is quoted at  $94\frac{3}{8} - \frac{1}{8}$  the middle would, of course, be  $94\frac{1}{2}$ . The term is used in respect of an enquiry by the broker to the jobber as to whether anything can be done at the middle price.

**Name Day.**—The second day of the settlement on the Stock Exchange. It is also called Ticket Day.

**Obligations.**—The name is often given to the bonds or shares of foreign railway companies. The French name for bonds.

**Official Assignees.**—Two members of the Stock Exchange who are annually appointed by the Committee to act as Official Assignee and Deputy Official Assignee respectively. They are designated as Official Assignees. It is their duty to obtain from a defaulter his original books of account and a statement of the sums owing to and by him, to attend meetings of creditors and to summon the defaulter before such meetings ; to enter into a strict examination of every account ; to investigate and report to the Committee forthwith any bargains found to have been effected at unfair prices ; and to manage the estate in conformity with the Rules, Regulations, and Usages of the Stock Exchange. Each Official Assignee has to find security amounting to £1,000 from two or more members of the Stock Exchange ; and in the event of any default or misappropriation by any Assignee of funds or property entrusted to his care, or of any other act of dishonesty, each of his sureties shall

pay, under direction of the Committee, such sum as he shall have guaranteed.

Once in every month the Official Assignees must bring before the Committee an account of the balances in their hands belonging to defaulters' estates, and the Committee must order such balances as they think fit to be paid over to the account of the Trustees of the Stock Exchange Benevolent Fund, subject to recall by the Committee for distribution amongst creditors or for payments by or to the Official Assignees which have been authorized by the Committee.

A statement of all sums so paid over, and of the amount remaining in the hands of the Trustees of the Stock Exchange Benevolent Fund on the 31st of December in every year, must be furnished by the Official Assignees and deposited in the Committee Room for the inspection of the members of the Stock Exchange.

On the first of February in each year the Official Assignees must lay before the Committee the names of the defaulters who have been re-admitted as members or clerks but have not paid 20s. in the £, with particulars as to the date of re-admission, the original liabilities, the dividends paid, and the date and amount of the last payment. On the 1st of March in each year the Official Assignees must lay before the Committee a statement of all dividends paid during the last year on each defaulter's estates.

**Official Receiver.**—For the purposes of the Companies Act (Companies Consolidation Act, 1908) so far as it relates to the winding-up of Companies by the Court in England, the term "Official Receiver" shall mean the Official Receiver, if any, attached to the Court for bankruptcy purposes, or if there is more than one such Official Receiver, then such one of them as the Board of Trade may appoint, or if there is no such Official Receiver, then an officer appointed for the purpose by the Board of Trade. This officer, for the purpose of his duties under this Act, is styled the Official Receiver. As to the duties and powers of the Official Receiver, see Sections 147 to 149 Companies Act, 1908. As to Liquidators for the purpose of conducting the winding-up of a Company and performing such duties in reference thereto as the Court may impose, the Court may appoint a Liquidator or Liquidators.

As to the appointment, remuneration, and title of Liquidator, the custody of a Company's property in a winding-up under an order of the Court, the powers of a Liquidator, the meetings of



creditors and contributories in an English winding-up, the information that a Liquidator has to give to an Official Receiver, and duties connected with this and control of his powers in England, see Sections 149 to 159, inclusive, of the Companies (Consolidation) Act, 1908.

**Option Certificates.**—Certificates issued by a Company giving their holders an option to take up shares at a given price at a certain date or dates. These are transferred in the same manner as shares.

**Options.**—A method of speculating with the advantage of being able to limit any loss. They are of three kinds: the *put*, which entitles the possessor of it to call upon the giver of it to buy from him at an agreed time in the future a definite amount of stock or a given number of shares at an agreed price; the *call*, which entitles the possessor of it to call upon the giver of it to sell to him at an agreed time in the future a definite amount of stock or a given number of shares at a fixed price. The call is thus the converse of the put, and the *put and call* is a double option, which entitles the possessor of it to exercise the option either way at the prices fixed for the put and call respectively. For the right to put or call, or to put and call, a price is paid of so much per cent.

**Over.**—A term used by jobbers to express  $1/32$ , such as “over the figure,”  $1\frac{1}{32}$ ,  $2\frac{1}{32}$ , etc., whatever the figure may be. “ $3/4$  under to over” would mean 14s.  $4\frac{1}{2}$ d., 15s.  $7\frac{1}{2}$ d. (“ $3/4$ ” means 15s.)

**Paid-up Shares.**—Where there is no further liability in respect of subscriptions and shares they are called paid-up shares.

**Plunger.**—A reckless speculator.

**Preference Bonds, Preference Shares, Preference Stock.**—Securities which enjoy special rights over the revenue or assets of a nation or company.

**Premium.**—The difference in value above the original or par price of a stock. Thus, if a share is of the original value of £100, and the market price is above £100, the share is at a premium. Premium is also used in the sense of (1) a bounty, (2) a payment for a loan in lieu of or in addition to interest.

**Put.**—See OPTIONS.

**Put and Call.**—See OPTIONS.

**Quoted.**—Stocks mentioned in the official list are said to be quoted.

**Rates.**—Abbreviated from rates of continuation; prices of contango and backwardation.

**Registered Bonds.**—Bonds registered in owner's name.

**Registered Shares and Stock.**—Shares and stock registered in the holder's name in the books of the company.

**Registration Fee.**—A fee charged by public companies for completing the transfer of stock according to the terms of the deed of transfer. The fee is usually 2s. 6d. per deed, but some mining companies charge 2s. 6d. per 100 shares.

**Remisier.**—A term used on the Stock Exchange which is applied to a certain class of men employed by brokers in their business who may be resident outside Great Britain, Northern Ireland, and the Irish Free State, and whose names are registered with the Stock Exchange Committee. The regulations which apply to Remisier are dealt with elsewhere. In its ordinary sense the word is used in the sense of putting a coach in a coach house.

**Rentes.**—The French equivalent for the British Consols, though the name is also applied to the annual interest paid on the National Debts of Austria, Italy, and other foreign Governments. The purchaser of consols or rentes buys a right to claim annually a sum of money in perpetuity. The right, however, may be sold and repurchased as often as a person pleases.

**Rig.**—"Rigging the market" is a term employed on the Stock Exchange, and means the forcing up of the market value of a security without reference to its real value. It is usually effected by secretly buying-up so much of a security as will produce an artificial value or a temporary scarcity. The operation often brings considerable profit to the market riggers.

**Runner.**—One who is engaged temporarily in a broker's or jobber's office usually on account days to collect differences and deliver stock. Also a person who secures orders for a broker for the half commission paid by him.

**Sag.**—The slow dwindling of the prices of securities owing to an absence of business.

**Scrip.**—A Stock Exchange term contracted from subscription. It is the personal certificate of a person's shares in a Government loan or in a joint-stock company. When the Government of a foreign country wishes to issue a loan or when a public company requires to borrow money, the public are invited to subscribe by means of a prospectus. A subscriber who applies, if his application is successful, receives a letter of allotment, which is exchanged



for scrip as soon as the subscriber pays the first instalment of the purchase money for the share or shares. The scrip contains the number of bonds or shares taken up by the subscriber, a receipt giving the amount and the date of the first instalment paid by the subscriber, and the amounts and the dates of each instalment which remain to be paid. When the whole of the instalments are paid the scrip is exchanged for a bond or certificate.

A scrip certificate, or provisional certificate, or other document entitling a person to become the proprietor of any shares in a joint-stock company requires a 2d. impressed stamp.

Scrip and share certificates are often used in the same sense by commercial men.

**Selling Out.**—If the seller of registered shares has not received a name by 3 o'clock on Ticket-day, he is entitled to sell out the shares by auction for cash by means of the official broker.

**Settlement Days.**—These are the days appointed by the Stock Exchange for the settlement of accounts. At the first meeting in September, the Committee fix *twenty-four* Account-days for the ensuing year.

The Settlement consists of

The Contango-day,

The Ticket-day.

The Intermediate-day,

The Account-day.

Should the Account be so fixed that the Contango-day would in the ordinary course fall on a Saturday, the Contango-day is the preceding business day.

**Settling Day.**—The last day of the Stock Exchange settlement.

**Shake Out.**—A temporary reaction in a rising market. The term is used to denote the shaking out of weak bulls.

**Share Certificate.**—These are documents issued by a public company to its shareholders, showing that the persons named therein are the holders of so many shares in the company. The numbers of the shares and the amount paid up are stated, and the certificates are under the common seal of the company.

The form of a share certificate is commonly as follows—

THE C D COMPANY, LIMITED

“ This is to certify that A B is a registered holder of *m* shares

of £ $n$  each, numbered  $p$  to  $q$  inclusive, in the above-mentioned company, and that the sum of £ $x$  has been paid up on each of the said shares. Given under the common seal of the said Company, this 1st day of January, 19..."

A share certificate is *prima facie* evidence of the title of a member to the share or stock comprised therein, and its issue is intended to facilitate dealings in the open market. It is the proper and only documentary evidence of title in the possession of a shareholder. It requires no stamp although it is a document under the seal of the company. But a scrip certificate or other document entitling any person to become the proprietor of any share of a company needs a stamp. If a share certificate is lost it is generally provided by the Articles of Association that a new certificate shall be granted on a proper indemnity being given by the shareholder.

**Share Warrants.**—Share warrants to bearer are by custom treated as negotiable instruments. They bear a heavy stamp duty under the Finance Act, 1920, namely, three times the duty which is payable on transfer. This has operated as a check upon their issue (see **STAMP DUTIES**). The issue and effect of share warrants to bearer is set out under Section 37 of the Companies Act. (See **Companies (Consolidation) Act, 1908.**)

**Shares.**—The equal portions of the capital of a joint-stock company.

**Short of Stock or Sold Short.**—An American term equivalent in meaning to the word bear. Speculators are said to be short of stock when they have sold what they do not possess.

**Shut for Dividend.**—An expression used when the transfer books of banks and joint-stock companies are closed to permit of the dividend warrants being prepared and issued.

**Single Option.**—See **OPTIONS**.

**Slump.**—A sudden fall in prices.

**Stag.**—An expression used to signify a person who applies for shares in any new company, with the sole object of selling them at a premium, and never intending to hold or eventually subscribe for the shares.

**Stamp Duties.**—By the Finance Act, 1920 (10 & 11 Geo. 5, c. 18, s. 35) the Stamp duty chargeable under the heading Scrip Certificate, Script, or other documents in the First Schedule to the principal Act shall be twopence instead of one penny.



### STAMP DUTY ON TRANSFERS OF STOCKS AND MARKETABLE SECURITIES

By Section 36 of the Act of 1920 it is enacted that (1) The proviso to Section 73 of the Finance Act, 1910, 10 Edwd. 7, c. 8 (which exempts from the operation of that Section certain conveyances and transfers) shall not have effect as regards any conveyances or transfers whatsoever of any stocks or marketable securities, and accordingly the Stamp duties chargeable on any such conveyances or transfers under the heading *Conveyance or Transfer* on sale of any property in the First Schedule to the principal Act, shall be double those specified in that Schedule. (Principal Act means the Stamp Act, 1891.)

(2) The Stamp duties chargeable under the heading *Conveyance or Transfer*, whether on sale or otherwise in the First Schedule to the principal Act, shall, in the case of conveyances or transfers on sales, or conveyances or transfers operating as voluntary dispositions, *inter vivos*, be double those specified in that schedule. •

The following is the adjusted scale of *ad valorem* stamps on transfers—

Consideration not exceeding.	Amount.	Consideration not exceeding.	Amount.	Consideration not exceeding.	Amount.
£	s. d.	£	£ s. d.	£	£ s. d.
5	1 0	75-100	1 0 0	250-275	2 15 0
5-10	2 0	100-125	1 5 0	275-300	3 0 0
10-15	3 0	125-150	1 10 0	300-350	3 10 0
15-20	4 0	150-175	1 15 0	350-400	4 0 0
20-25	5 0	175-200	2 0 0	400-450	4 10 0
25-50	10 0	200-225	2 5 0	450-500	5 0 0
50-75	15 0	225-250	2 10 0		

After £500, 10s. for every £50 or part of £50.

### STAMP DUTY ON TRANSFER OF CERTAIN COLONIAL AND FOREIGN STOCKS

By Section 37 (1). The Stamp duty chargeable by way of composition for Stamp duty under Section 114 of the principal Act

as extended by Section 39 of the Finance Act, 1894, and Section 5 of the Finance Act, 1898, shall be double the amount charged by the said Section 114.

(2) The Stamp duty chargeable under Section 115 of the principal Act by way of composition for Stamp duty shall, in the case of accounts, required to be delivered on or within seven days before the first day of August, 1920, be eleven pence, and in the case of all accounts delivered subsequently be one shilling for every hundred pounds and any fraction of one hundred pounds over any multiple of one hundred pounds.

(3) Any agreement entered into before the passing of this Act between the Commissioners of Inland Revenue and any persons under any Act other than the principal Act, for the payment to the Commissioners of any sums by way of composition for any Stamp duty of a class in respect of which a composition may be made under Section 115 of the principal Act, shall cease to have effect as from the first day of September, 1920, without prejudice to the power of the Commissioner and these persons to make any fresh agreement.

By Section 38. The Stamp duties chargeable on any marketable securities transferable by delivery under paragraphs (1) (a) and (c), 3, and 4, of the heading *Marketable Security in the First Schedule to the Principal Act*, and the Stamp duty chargeable on marketable securities transferable by delivery, share warrants, stock certificates, and other instruments to Bearer ; under subsection (1) of Section 4 and Section 5 of the Finance Act, 1899, on stock certificates to bearer ; under Section 8 of the Colonial Stock Act, 1877, and on certain marketable securities under Section 13 of the Finance Act, 1911, shall respectively be double the duties which would have been chargeable on these instruments immediately before the passing of this Act.

#### STAMP DUTY ON STATEMENTS AS TO CAPITAL OF COMPANY

Since the 20th of April, 1920 ; (1) One pound has been substituted for five shillings

(a) as the *ad valorem* Stamp duty imposed by Sections 112 and 113 of the principal Act as extended by Section 12 of the Finance Act, 1896, on statements as regards the capital of the Companies referred to in these sections ; and



(b) As the *ad valorem* Stamp duty payable under or by virtue of any private Act on any statements as regards the capital of any company ; and

(c) As the *ad valorem* stamp imposed by Section 11 of the Limited Partnerships Act, 1907, on statements with regard to the amount contributed by limited partners to limited partnership.

(2) In the case of a Company registered or otherwise incorporated, or an increase of capital authorized on and after the 20th of April, 1920, and before the passing of this Act, a supplementary statement of the nominal share capital of the Company, or of the amount of increase so authorized, as the case may be, shall within fifteen days after the commencement of this Act be delivered to the Commissioners of Inland Revenue duly stamped with the additional duty of fifteen shillings for every one hundred pounds, and any fraction of one hundred pounds over any multiple of one hundred pounds of the capital or increase of capital as the case may be.

If any supplementary statement required to be delivered in accordance with the requirements thereof, the duty chargeable on the statement, together with interest thereon at the rate of 5 per cent per annum from the date of the commencement of this Act, shall be recoverable from the Company as a debt due to His Majesty.

By Section 42 it is enacted that (1) Where stock is transferred on sale to a dealer, or his nominee, and the transfer bears in addition to the stamp denoting the duty an impressed stamp (hereinafter referred to as the supplementary stamp) denoting that it has been stamped under the provisions of this section, the maximum duty chargeable on the transfer shall, subject to the provisions of this section, be ten shillings. (See Stock Exchange Rule 128.)

Provided that a transfer shall not be stamped with the supplementary stamp unless it is proved to the satisfaction of the Commissioners of Inland Revenue that the transaction to which effect is to be given by the transfer, was a transaction carried out by the dealer in the ordinary course of his business as such dealer.

(2) Where a transfer has been stamped with the supplementary stamp under this Section, the dealer to whom or to whose nominee the transfer was made, shall—

(a) Immediately on the expiration of two months from the date of the transfer furnish to the Commissioners of Inland Revenue

a certificate in such form as the Commissioners may prescribe showing what part, if any, of the Stock comprised in the transfer has been transferred by him to a *bona fide* purchase, and what part, if any, of the Stock has not been so transferred, and shall produce such further evidence by way of Statutory declaration or otherwise in relation to the matter aforesaid as the Commissioners may require ; and

(b) If any part of the Stock has not, before the expiration of the said two months, been so transferred as aforesaid, pay to the Commissioners within fourteen days after the expiration of that period a sum equal to the difference between the amount of the duty actually charged on the transfer, and the amount of the *ad valorem* duty which would have been chargeable thereon if the Stock comprised therein had been the Stock which was not so transferred as aforesaid. If any person fails duly to pay any sum which he is liable to pay under the provisions of this subsection, that sum, together with interest thereon at the rate of 10 per cent per annum from the date of the transfer, shall be recoverable from him as a debt due to His Majesty, and if any person fails to comply with any of the other provisions of this subsection, a sum equal to the difference between the amount of the Stamp duty actually charged on the transfer and the amount which would, but for this section, have been chargeable thereon, together with interest on that sum at the rate of 10 per cent per annum from the date of the transfer, shall be recoverable from him as a debt due to His Majesty.

(3) For the purpose of this Section :—

The expression, dealer, means a person who being a member of a Stock Exchange in the United Kingdom does not deal by way of business otherwise than with or through other members of that Stock Exchange or otherwise than as a principal, and does not carry on the business of a broker or agent. (See Rule 128 of the Rules and Regulations of the London Stock Exchange.)

#### TRANSFER OF REGISTERED BONDS BY DEED

By Section 48 of the Finance Act, 1921 (11 & 12 Geo. V., c. 32). For the purpose of removing doubts it is hereby declared that by virtue of subsection (4) of Section 37 of the Finance Act, 1917, the provisions of Section 17 of the Finance Act, 1911 (which authorizes the transfer by deed of any Stock for the time being



transferable in the books of the Bank) shall apply to Registered Bonds issued under the War Loan Acts, 1914 to 1919.

**Taking in Stock.**—Taking in stock and giving on stock are the reverse positions of the people who arrange a Contango. The bull is the giver, the bear the taker. Money-lenders who advance money for the account on stocks and shares are takers-in. In continuation the taker-in of stock becomes the purchaser of it for the current account, but becoming the purchaser he is concurrently bound to deliver back a like amount of stock on the ensuing account.

**Talon.**—A certificate attached to transferable bonds (usually the last portion of the coupon sheet), to be exchanged for an additional series of coupons as soon as those on the coupon sheet have all been presented and paid.

**Tape Prices.**—This term signifies the Stock Exchange and other market quotations as recorded on the tape of the instruments of the Exchange Telegraph Company.

**Ticket.**—In the case of registered stocks the ticket is a slip of paper bearing upon it the name of the buyer of the stock and the price the buying broker wishes to be placed upon the transfer deed upon which the *ad valorem* duty is payable. This ticket passes through the hands of the various middlemen, who pass it through their books as if the actual stock had passed and the account been closed. When it eventually falls into the hands of the selling broker, he has the deed of transfer made out and signed by his client, and it is then delivered direct to the buying broker, whose name is on the ticket. A ticket is frequently split by the intermediaries from whom the extra charges in stamps and fees, on account of splitting, are collected afterwards. Tickets pass also in the case of bearer stocks, in order to facilitate the passing of stock.

**Time Bargain.**—In its proper sense means a contract for the future delivery of stock, the amount or value of which cannot be ascertained; it does not amount to a wager. The term is also applied to a contract for differences on the Stock Exchange.

**Transfer Book.**—A book kept for the transfer of inscribed stock at the Bank of England. The seller only is required to sign his name in the Bank's register in order to make a transfer.

**Transfer Deed.**—A deed by which stock is transferred. The common form is shown on the next page.

Stock forwarded  
to the Company's  
Office by

In consideration of the sum of  
paid by  
hereinafter called the said Transferee  
Do hereby bargain, sell, assign, and transfer to the said Transferee

of in the undertaking called  
the

To Hold unto the said Transferee

Executors, Administrators, and Assigns subject to the several  
conditions on which held the same

immediately before the execution hereof; and

the said Transferee, do hereby agree to accept and take the  
said , subject to the conditions  
aforesaid.

As Witness our Hands and Seals this day of  
in the year of our Lord one thousand nine  
hundred and

Signed, sealed, and delivered  
by the above-named

In the presence of

Witness

{ Signature\*  
Address  
Occupation

Seal.

Signed, sealed, and delivered  
by the above-named

In the presence of

Witness

{ Signature\*  
Address  
Occupation

Seal.

Signed, sealed, and delivered  
by the above-named

In the presence of

Witness

{ Signature\*  
Address  
Occupation

Seal.

Signed, sealed, and delivered  
by the above-named

In the presence of

Witness

{ Signature\*  
Address  
Occupation

Seal.



**NOTE.**—The Consideration money set forth in a transfer may differ from that which the first Seller will receive owing to sub-rates by the original Buyer. The Stamp Act requires that in such cases the Consideration money paid by the Sub-purchaser shall be the one inserted in the Deed, as regulating the *ad valorem* duty. The following is the clause in question:—

"Where a person having contracted for the purchase of any Property, but not having obtained a Conveyance thereof, contracts to sell the same to any other Person, and the Property is, in consequence, conveyed immediately to the Sub-purchaser, the Conveyance is to be charged with *ad valorem* Duty, in respect of the consideration owing from the Sub-purchaser" [54 & 55 Vict. c. 39 (1891), Section 58, Sub-section 4].

#### Instructions for executing Transfers.

\* When a transfer is executed out of Great Britain it is recommended that the signature be attested by H.M. Consul, or Vice-Consul, a clergyman, magistrate, notary public or by some other person holding a public position, as most Companies refuse to recognize signatures not so attested. When a witness is a Female she must state whether she is a Spinster, Wife, or Widow, and if a Wife she must give her Husband's Name, Address, Quality, Profession or Occupation. The date must be inserted in Words and not in Figures.

**Transferee.**—The person to whom the document or security is transferred. The buyer named in a transfer deed.

**Transferor.**—The person who parts with the document or security to the transferee. The seller named in a transfer deed.

**Unauthorized Clerks.**—Clerks admitted to the House, but who have no power to transact business on behalf of their employers.

**Vendors' Shares.**—Shares which are taken in lieu of cash by persons who convert their businesses into public companies; they take such dividend as may be agreed. Sometimes this is *pari passu* with ordinary shares and at other times deferred. This depends upon the company's Articles.

**Waiter.**—A uniformed official in the Stock Exchange.

#### STOCK EXCHANGE ABBREVIATIONS

**Anglo A.**—Anglo-American Telegraph Company deferred.

**Atch.**—Atcheson, Topeka, and Santa Fé Railroad common.

**Bags.**—Buenos Ayres Great Southern Railway ordinary.

**Bays.**—Hudson Bay shares.

**Becks.**—Bechuanaland Exploration shares.

<b>Boards.</b> —	{	Old Boards Metropolitan	3½.
		New Boards                   ,,	3.
		Little Boards               ,,	2½.

**Canadas, or Canpacs.**—Canadian Pacific Railway common.

**Chartered.**—British South Africa Company's shares.

**Childers.**—2¾ Annuities.

**Chops.**—Chartered Options.

**Cottons.**—English Sewing Cotton shares.

**Curs.**—Central Uruguay or Monte Video Railway ordinary.

**Districts.**—Metropolitan District Railway ordinary stock.

**Gips.**—Great Indian Peninsula Railway.

**Goldfields.**—Consolidated Goldfields of South Africa.

**Goschen's.**— $2\frac{1}{2}$  Consolidated.

**Irish.**— $2\frac{3}{4}$  Guaranteed (Irish Land Act).

**Johnnies.**—Johannesburg Consolidated Investment Company's shares.

**Khakis.**—The South African War Loan.

**Koffies.**—Koffyfontein Estates shares.

**Mails.**—Mexican Railway ordinary.

**Mets.**—Metropolitan Railway Company ordinary.

**Milks.**—Chicago, Milwaukee, & St. Paul's Railroad common.

**Mists.**—Mexican Railway first preference.

**National Seconds.**—National Railways of Mexico second preference.

**Oceans.**—Oceana Consolidated Company shares.

**Penns.**—Pennsylvania Railroad common.

**Rocks.**—Rock Island Co., Common shares.

**Rosies.**—Buenos Ayres & Rosario Railway ordinary.

**Sallies.**—South African Land Exploration Co. shares.

**Silvers.**—India Rubber Gutta Percha Company shares.

**Slops.**—Allsopp's Brewery ordinary.

**Slubbers.**—British Cotton Wool Dyers' Shares.

**Soos.**—Minneapolis, St. Paul, & Sault St. Marie bonds.

**Soups.**—Southern Pacific Railroad common.

**Tanks.**—Tanganyika Concessions shares.

**Terrors.**—Northern Territories Goldfields of Australia.

**Vestas.**—Railway Investment deferred stock.

**Wags.**—West Australian Goldfields.

**Westerns.**—Great Western Railway ordinary.



## CHAPTER VIII

### NEW ISSUES

As no dealings, whether for Cash or for the Account, will be allowed in any new issue unless allowed by the Committee or excepted from this rule (159), under Appendix 34D or 34E (to the Rules), it is necessary to state what regulations are in force before permission to deal in new issues on the Stock Exchange will be granted.

In the first instance an application must be made to the Secretary of the Share and Loan Department and (A) the following documents and particulars must be sent to him:—

(1) The Certificate of Incorporation (in the case of a Company registered abroad, notarially certified copy or translation of Certificate of Incorporation and of by-laws).

(2) Copy of Resolutions authorizing the issue.

(3) Certified Copy of Agreement relating to issue of shares credited as fully paid, and of any other contracts mentioned in prospectus.

(4) In the case of an issue for cash, copy of Prospectus, offer for sale, or circular of issue stating all material conditions relating to the flotation of the issue and (in the case of a new Company) to the formation of the Company, and endorsed with the date of advertisement if publicly advertised.

(5) If issued *pro rata* to existing shareholders an undertaking to split letters of renunciation.

(6) Specimen (or advance proof) of allotment letter and if possible of definitive certificates. In order to facilitate the certification of transfers it is suggested that the allotment letters should contain the distinctive number of the shares to which they relate.

(7) Letter (a) giving distinctive numbers of shares issued; (b) undertaking to issue all the allotment letters simultaneously and to certify transfers against allotment letters; and (c) stating (in the case of a further issue) whether or not the shares are identical in all respects with existing shares.

(8) Approximate date when definitive certificates will be ready for issue.

(9) In all issues other than Government or Municipal Loans,

whether by prospectus or otherwise, particulars of any underwriting must be disclosed, and copy of underwriting agreement and of sub-underwriting letter, if any, must be produced.

(10) In case of a debenture issue, copy or draft of Trust Deed.

(11) List of allottees or present holders, name, address, and holding (when required).

*B.* In the absence of any prospectus publicly advertised in this country or circular to shareholders, the Committee will also require an advertisement in two leading London morning papers giving all material conditions relating to the formation of the Company and to the flotation of the issue, and stating that the directors, collectively and individually, are responsible for the information advertised.

These details must also include official statements as to (1) The capital authorized and issued ; (2) borrowing powers and the extent to which they have been exercised ; (3) date and particulars of Incorporation ; (4) names and addresses of Directors, Bankers, Auditors, and Secretary ; (5) objects of the Company, nature of its business, or particulars of property acquired.

*C.* Where a broker is instructed to sell on behalf of a Company a further issue of stock or shares forming a part of an amount previously created (permission to deal, if necessary, having been given for the original issue), he may obtain permission to deal on presentation of a letter from the Company authorizing him to make the sale, or he may sell the stock or shares previous to permission being granted provided he makes the sale subject to the permission being granted.

*D.* In the case of securities of a purely local nature within Great Britain or Northern Ireland, or of a Colonial or Foreign issue of which no former security has been quoted previously on a Colonial or Foreign exchange, a broker may make a specific bargain with the authority of the Chairman or the Deputy Chairman or two members of the Sub-Committee on New Issues and Official Quotations, but bargains must not be recorded in the Supplementary List until permission to deal in the issue has been granted by the Committee.

*E.* In the case of securities quoted on a Colonial or Foreign Exchange, or in the case of new issues, where a previous issue or issues of the same Country, Corporation, or Company have been quoted on a Colonial or Foreign exchange, a broker may make a specific bargain, but bargains cannot be recorded in the



Supplementary List until permission to deal in the issue has been granted by the Committee.

Assuming that the Secretary of the Share and Loan department is in possession of the documents and conditions required, and all other requirements have been fulfilled, he will then consider the application; but he will not allow an official quotation until certain conditions have been complied with. It is therefore desirable for a Company's legal advisers in drafting Articles of Association to understand what these conditions are, for the Stock Exchange Rules go beyond the requirements of the Company Acts in that they have provided for additional safeguards in the shape of the fullest information being given, both for the benefit of their own members and of the general public on whose behalf they deal. One of these safeguards is that a broker, a member of the Stock Exchange, must be authorized to give the committee full information as to the security and to furnish them with all particulars they require.

It has been already stated that the committee have power to order the quotation in the Official List of any security which they consider of sufficient magnitude and importance, and that the application must be made to the Secretary of the Share and Loan Department, but it must comply with the conditions and requirements which the Committee may order, except where they may agree to waive one or more of such conditions and requirements (see Rule 162).

#### A. CONDITIONS PRECEDENT TO AN APPLICATION FOR OFFICIAL QUOTATION

The conditions meant are those stated in App. 35A to G of the Rules.

(1) That the prospectus must have been publicly advertised;  
(2) that it must agree substantially with the Act of Parliament or Articles of Association.

The *Prospectus* means any prospectus, notice, circular, advertisement, or other invitation offering to the public for subscription or purchase any shares or debentures of a Company. (Sect. 285, Companies (Consolidation) Act, 1908.)

*Articles of Association* means the Articles of Association of a Company as originally framed or as altered by special resolution

including so far as they apply to the Company, the regulations contained (as the case may be) in Table B, in the schedule annexed to the Joint-Stock Companies Act, 1856, or in Table A in the first schedule annexed to the Companies Act, 1862, or in that Table as altered in pursuance of Section 71 of that Act, or in Table A in the First Schedule to the Companies (Consolidation) Act, 1908.

*Company* means a Company formed and registered under this Act, or an existing Company; an "Existing Company" means a Company formed and registered under the Joint-Stock Companies Acts or under the Companies Act, 1862.

A Company which does not issue a prospectus on or with reference to its formation, shall not allot any of its shares or debentures unless, before the first allotment of either shares or debentures, there has been filed with the Registrar of Companies a statement in lieu of prospectus signed by every person who is named therein as a director, or a proposed director, of the Company or by his agent authorized in writing, in the form and containing the particulars set out in the Second Schedule to this Act. (Sect. 82, ss. 1 Companies (Consolidation) Act, 1908.) This Section does not apply to a private Company or to a Company which had allotted any shares or debentures before 1st July, 1908 (*ibid.*, ss. 2).

The Second Schedule to this Act sets out a form as follows—

#### SECOND SCHEDULE

### THE COMPANIES (CONSOLIDATION) ACT, 1908 STATEMENT IN LIEU OF PROSPECTUS

*Filed by*.....*Limited*

Pursuant to Section 82 of the Companies (Consolidation) Act, 1908

*Presented for filing by*.....

THE COMPANIES (CONSOLIDATION) ACT, 1908  
LIMITED

#### STATEMENT IN LIEU OF PROSPECTUS

The nominal share capital of the Company :	£
Divided into :	Shares of £ each. " " " "
Names, descriptions, and addresses of directors or proposed directors.	
Minimum subscription (if any) fixed by the Memorandum or Articles of Association on which the Company may proceed to allotment.	



Number and amount of shares and debentures agreed to be issued as fully or partly paid-up, otherwise than in cash.	1. Shares of £ fully paid.
The consideration for the intended issue of these shares and debentures.	2. Shares upon which £ per share credited as paid.
	3. debenture £.
	4. Consideration.
Names and addresses of (a) Vendors of property purchased or acquired or proposed to be ; (b) purchased or acquired by the Company.	
Amount (in cash, shares, or debentures) payable to each separate vendor.	
Amount (if any) paid or payable (in cash or shares or debentures) for any such property specifying amount (if any) paid or payable for goodwill.	Total purchase price £
	Cash . . . £
	Shares . . . £
	Debentures . . . £
	Goodwill . . . £
Amount (if any) paid or payable as commission for subscribing, or agreeing to subscribe, or procuring or agreeing to procure, subscriptions for any shares or debentures in the Company or	Amount paid.
Rate of the commission.	„ payable.
	Rate per cent.
Estimated amount of preliminary expenses.	£
Amount paid or intended to be paid to any promoter.	Name of promoter.
Consideration for the payment.	Amount £.
	Consideration.
Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the Company or entered into more than two years before the filing of this statement).	
Time and place at which the contracts or copies thereof may be inspected.	
Names and addresses of the auditors of the Company (if any).	
Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the Company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm ; with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise, by any person either to induce him to become or to qualify him as a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the Company.	

Whether the Articles contain any provisions precluding holders of shares or debentures receiving and inspecting balance sheets or reports of the auditors, or other reports.	Nature of the provisions.
(Signatures of the persons above named as directors, or proposed directors, or of their agents authorized in writing.)	

The word *Vendor* is defined by Section 81 (2) of the Companies (Consolidation) Act as being for the purposes of this Section “every person who has entered into a contract, absolute or conditional, for the sale or purchase or for any option of purchase of any property to be acquired by the Company in any case where :—

“ (a) The purchase money is not fully paid at the date of issue of the prospectus ; or

“ (b) The purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus ; or

“ (c) The contract depends for its validity or fulfilment on the result of that issue. (3) Where any of the property to be acquired by the Company is to be taken on lease this Section shall apply as if the expression vendor included the lessor, and the expression ‘ purchase money ’ included the consideration for the lease, and the expression ‘ sub-purchase ’ included as sub-lessee.”

The Stock Exchange Rules, Appendix 35A, provide in addition that the prospectus (3) must provide for the payment of 10 per cent upon the amount subscribed. (4) If debentures or debenture stock is offered it must state fully the terms of redemption. (5) In the case of offering debentures whether they are to bearer or registered. (6) In cases where a Company has sold an issue of capital or debentures or debenture stock which is subsequently offered for public subscription, either by the Company or any subsequent purchaser, it must state the authority for the issue and all material conditions of sale.

Another of the conditions precedent is that two-thirds of the amount proposed to be issued of any class of shares or securities, whether such issue be the whole or part of the authorized amount, shall have been applied for by and unconditionally allotted to the public ; shares or securities granted in lieu of money payments not being considered to form a part of such public allotment. There are two further conditions: (a) that the Articles of Association



and the Trust Deed where such is required contain the provision specified hereafter ; (b) that the certificate or bond is in the form approved.

By Section 27 of the Companies (Consolidation) Act, 1908, "no notice of any trust, expressed, implied, or constructive, shall be entered in the register or be receivable by the registrar in the case of Companies registered in England or Ireland."

### B. ARTICLES OF ASSOCIATION

Appendix 35B, Stock Exchange Regulations, provides that Articles of Association shall contain the following provisions:—

(1) That none of the funds of the Company shall be employed in the purchase of or in loans upon the security of its own shares.

(2) The directors must hold a share qualification.

(3) That the borrowing powers of the Board are limited.

(4) That the non-forfeiture of dividends is secured.

(5) That the common form of transfer shall be used.

(6) That all share and stock certificates shall be issued under the common seal of the Company, and shall bear the signatures of one or more directors and the secretary.

(7) That fully-paid shares shall be free from all lien.

(8) That the interest of a director in any contract shall be disclosed before execution, and that such director shall not vote in respect thereof.

(9) That the directors shall have power at any time and from time to time to appoint any other qualified person as a director, either to fill a casual vacancy or as an addition to the Board, but so that the total number of directors shall not at any time exceed the maximum number fixed ; but that any director so appointed shall hold office only until the next following Ordinary General Meeting of the Company, and shall then be eligible for re-election.

(10) That a printed copy of the Report accompanied by the Balance Sheet and Statement of Accounts shall, at least seven days previous to the General Meeting, be delivered or sent by post to the registered address of every member, and that three copies of each of these documents shall at the same time be forwarded to the Secretary of the Share and Loan Department, The Stock Exchange, London.

(11) That the charge for a new share certificate issued to replace

one that has been worn out, lost, or destroyed, shall not exceed one shilling.

It should be noticed that Section 10 of the Companies (Consolidation) Act, 1908, states that in the case of a Company limited by shares there may be registered with the Memorandum Articles of Association, but in the case of a Company limited by guarantee, or unlimited, these must be registered, and these Articles must be signed by the subscribers to the memorandum, and must prescribe regulations for the Company. Articles of Association may adopt all or any of the regulations contained in Table A in the First Schedule to this Act. In the case of an unlimited Company or a Company limited by guarantee, the Articles, if the Company has a share capital, must state the amount of share capital with which the Company proposes to be registered. In the case of an unlimited Company or a Company limited by guarantee if the Company has not a share capital, the Articles must state the number of members with which the Company proposes to be registered, for the purpose of enabling the Registrar to determine the fees payable on registration.

By Section 11. In the case of a Company limited by shares and registered after the commencement of this Act. If Articles are not registered, or if Articles are registered in so far as the Articles do not exclude or modify the regulations in Table A in the First Schedule to this Act, those regulations shall, so far as applicable, be the regulations of the Company in the same manner and to the same extent as if they were contained in duly registered Articles.

Table A contains the regulations for management of a Company limited by shares, and in adopting Table A or in settling the Articles of Association of a Company, regard should be paid to the Stock Exchange requirements which have been already stated.

### C. TRUST DEEDS

Trust deeds should contain the following provisions—

(1) Where provision is made that the security shall be repayable at a premium either at a fixed date or at any time upon notice having been given, the trust deed must further provide that should the company go into voluntary liquidation for the purposes of amalgamation or reconstruction the security shall not be repayable at a lower price.



(2) The following clause should be inserted in all deeds—

“The statutory power of appointing new trustees hereof shall be vested in the Company, but a trustee so appointed must in the first place be approved of by a resolution of the debenture (or debenture stock) holders, passed in the manner specified in the schedule hereto. A Corporation or Company may be appointed a trustee of these presents.”

(3) In the clause regulating the convening of meetings of the debenture (or debenture stock) holders, the following words should be inserted:—

“And the trustee or trustees shall do so upon a requisition in writing signed by holders of at least one-tenth of the nominal amount of debentures (or debenture stock) for the time being outstanding.”

(4) The clause defining an extraordinary resolution must provide that the expression “‘extraordinary resolution’ means a resolution passed at a meeting of the debenture (or debenture stock) holders duly convened and held at which a clear majority in value of the whole of the debenture (or debenture stock) holders is present in person or by proxy and carried by a majority consisting of not less than three-fourths of the persons voting thereat upon a show of hands, and if a poll is demanded, then by a majority consisting of not less than three-fourths in value of the votes given on such poll.”

(5) Should debentures or debenture stock be entitled “First Mortgage” provision must be made for the creation of a specific first mortgage in favour of the debenture or debenture stock holders.

Section 69 of the Companies Consolidation Act defines an extraordinary resolution as follows: “A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a general meeting of which notice, specifying the intention to propose the resolution as an extraordinary resolution, has been duly given.” It will be observed that there is a considerable difference between the two definitions.

#### D. SHARE AND STOCK CERTIFICATES

All certificates should state on their face the authority under

which the Company is constituted and the amount of the authorized capital of the Company.

The method of signature must be in accordance with the Articles of Association.

All certificates should bear a footnote to the effect that no transfer of any portion of the holding can be registered without the production of the certificate.

Where the capital of the company consists of more than one class of shares of the same denomination the distinctive numbers of the shares of each class must be printed on the face of the share certificates.

All preference share certificates should bear on their face a statement of the Company's capital, and the conditions both as to capital and dividends under which the shares are issued.

Debentures and debenture stock certificates should, in addition to legal requirements, state on their face the authority under which the Company is constituted, the nominal capital of the Company, the dates when the interest on the debentures or debenture stock is payable, and the authority under which the issue is made (i.e. Articles of Association and resolution): and on their back the conditions of issue, redemption, and transfer.

#### *E. BONDS*

Bonds must specify the amount and conditions of the loan and the powers under which it has been contracted.

Bonds and debentures of English Companies must be under the common seal of the Company, and must bear the requisite autographic signatures.

When an issue of Colonial or Foreign Bonds or Debentures is made wholly or partly in London, those issued in London must bear the autographic counter signature of the London Agents or Contractors.

#### *F. NEW COMPANIES*

Before the application form can be issued for signature there must be supplied—

A copy of the prospectus.

Two copies of the Articles of Association.

In the case of debentures or debenture stock the trust deed (where possible before execution).



G. After the application form has been signed there must also be supplied in the case of:—

### SHARES

The Certificate of Incorporation and the Certificate that the Company is entitled to commence business.

Two certified copies of the prospectus endorsed with the date when first advertised.

Two certified copies of the Memorandum and Articles of Association.

The original letters of application.

The Allotment Book containing a list of applicants, the number applied for by each and the result of each application, with a summary signed by the Chairman and Secretary.

Should the allotment have taken place at an interval of six months or more before the date of the application a certified list of present shareholders is also required.

A copy of the letter of allotment and the date when posted.

A specimen of the share certificate.

Authenticated copies of all concessions and similar documents with notarially certified printed translations and certified printed copies of all contracts and agreements.

A statutory declaration by the Chairman and Secretary stating the following particulars:—

(1) That the prospectus complies with the provisions of the Companies Acts, 1908 to 1917.

(2) That all documents required by the Companies Act, 1908 to 1917, have been duly filed with the Registrar of Joint Stock Companies and the dates of filing.

(3) The number of shares applied for by the public.

(4) The number of shares allotted unconditionally to the public (Nos.    to    ) and the amount per share paid thereon in cash.

(5) The total number of allottees and the largest number of shares (a) applied for by, and (b) allotted to any one applicant.

(6) The number of shares allotted for a consideration other than cash (being Nos.    to    ).

(7) That the share certificates have been or are ready to be issued.

(8) That the purchase of the property has been completed and the purchase money paid.

*H.* After the application form has been signed there must be supplied in the case of—

#### DEBENTURES AND DEBENTURE STOCK

The Certificate of Incorporation or Act of Parliament and the certificate that the Company is entitled to commence business.

A certified printed copy of the mortgage deed, or other similar document, and the official certificate of the registration of the mortgage or charge.

Certified copies of the Articles of Association, resolution, or other authority for the present issue.

Two certified copies of the prospectus.

The original letters of application.

The Allotment Book containing a list of applicants, the amount applied for by each, and the result of each application, with a summary of the whole signed by the Chairman and Secretary.

Should the allotment have taken place at an interval of six months or more before the date of the application, a certified list of present stockholders is required.

A copy of the allotment letter and the date when posted.

A specimen of the debentures or debenture stock certificate, and of the scrip where scrip is issued; certificates of debenture stock allotted to vendors in lieu of money payments being enfaced "Issued to Vendors."

A copy of the last published report and accounts.

A statutory declaration by the Chairman and Secretary stating—

(1) That the prospectus complies with the provisions of the Companies Acts, 1908 to 1917, and that all documents required by these Acts have been duly filed with the Registrar of Joint Stock Companies and the dates of filing.

(2) In the case of an English Company charging property abroad that the necessary mortgage has been properly legalized in the country where the property is situated.

(3) The amount of stock applied for by the public.

(4) The amount unconditionally allotted to the public (Nos. to ).

(5) The amount, viz. £ , per cent paid thereon in cash.

(6) The amount allotted for a consideration other than cash (Nos. to ).



- (7) The total number of allottees.
- (8) The largest amount of debentures or debenture stock:  
(a) applied for by, and (b) allotted to any one applicant.
- (9) That the debentures or debenture stock certificates have been or are ready to be issued.
- (10) That a trust deed has been executed and completed if such be the case.
- (11) The effect of such trust deed and the nature of the charge created thereby in favour of the debenture-holders.

A statutory declaration by the Chairman and Secretary stating—

- (1) The total amount of the Authorized Capital of the Company and how constituted.
- (2) The number of shares allotted unconditionally to the public (Nos.     to     ) and the amount paid on each share in cash.
- (3) The number of shares taken by concessionaires, owners of property, contractors, or other parties not included in the public allotment (being Nos.     to     ).
- (4) That the share certificates have been or are ready to be issued.
- (5) That the purchase of the property has been completed and the purchase money paid.

### I. SCRIP

In addition to the requirements made in the case of definitive stock or bonds, a specimen of the scrip certificate must be supplied.

In cases where a Government, Municipality, Corporation, or Company has sold an issue of stock, shares, or securities, which is subsequently offered for public subscription by the purchaser, evidence must be produced that the purchasing House has received due authority to issue the scrip on account of the Government, Municipality, Corporation, or Company, or in the alternative such scrip must be enfaced "Contractor's Scrip."

K. After the application form has been signed there must be supplied in the case of

### FURTHER ISSUES

A King's printers' copy of the Act of Parliament authorizing the resolutions, etc., creating, and the circular or prospectus offering, the new issue.

If shares have been issued credited as fully or partly paid, certified printed copies of the contracts relating thereto.

A copy of the allotment letter.

A copy of the last report and accounts.

A specimen of the share certificate.

The Allotment Book unless the allotment is *pro rata*.

A statutory declaration by the Secretary stating:—

(1) That the prospectus or circular complies with the provisions of the Companies Acts, 1908 to 1917.

(2) That all documents required by the Companies Acts, 1908 to 1917, have been duly filed with the Registrar of Joint-Stock Companies and the dates of filing.

(3) That the shares (Nos.     to     ) have been applied for by and unconditionally allotted to the shareholders, or the public, or sold upon the market as the case may be.

(4) The amount per share paid in cash.

(5) The total number of allottees and the largest number of shares applied for by and allotted to any one applicant.

(6) That the certificates have been or are ready to be issued.

(7) That no impediment exists to the settlement of the account.

(8) It must be also stated whether or not the shares are in all respects identical with those already quoted in the official list. This means that they are of the same nominal value and that the same amount per share has been called up ; that they carry the same rights as to unrestricted transfer, attendance, and voting at meetings, and in all other respects; and that they are entitled to dividend at the same rate and for the same period, so that at the next ensuing distribution the dividend payable on each share will amount to exactly the same sum.

The statement that stock is in all respects identical means that all the stock is entitled to the same rights as to unrestricted transfer and in all other respects.

All the stock is entitled to dividend at the same rate and for the same period, so that at the next ensuing distribution the dividend payable on each £100 of the stock will amount to exactly the same sum.

*L.* After the application form has been signed there must be supplied in the case of—

#### VENDOR'S SHARES

A certified list of the present holders of the vendor's shares. A



certified copy of the last published report and accounts of the Company. A specimen of the share certificate. A statutory declaration by the Secretary stating (1) That the Vendor's shares (Nos. to ) have all been issued and certificates delivered; (2) That the shares are in all respects identical with those already quoted in the official list.

The above particulars are now of no effect as the Stock Exchange Committee have deleted them by a rule dated 26th July 1926 (see page 71).

M. After the application form has been signed there must be supplied in the case of—

#### OLD COMPANIES

The Certificate of Incorporation or Act of Parliament and the certificate that the Company is entitled to commence business.

Authenticated copies of all concessions and similar documents with notarially certified printed translations.

Certified copies of all prospectuses, original or otherwise, endorsed with the date when first advertised.

Two certified copies of the Memorandum and Articles of Association.

A specimen of the share certificate and of the allotment letter.

A certified copy of present register of shareholders.

Certified printed copies of contracts, agreements, etc., together with copies of all contracts relating to the issue of shares credited as fully or partly paid.

A certified copy of the Company's last published report and accounts.

A short history of the Company setting forth its origin, progress, and dividends, etc., the number of transfers registered during the last twelve months, and the number of shares represented by such transfers.

Statutory declaration by the Chairman and Secretary stating the following particulars:—

(1) That the prospectus complied with the provisions of the Companies Acts, 1908 to 1917.

(2) That all documents required by the Companies Acts, 1908 to 1917, have been duly filed with the Registrar of Joint Stock Companies and the dates of filing.

(3) The number of shares applied for by the public.

(4) The number of shares allotted unconditionally to the public (Nos.    to    ) and the amount per share paid thereon in cash.

(5) The number of shares allotted for a consideration other than cash (being Nos.    to    ).

(6) That the share certificates have been or are ready to be issued.

(7) That the purchase of the properties has been completed and the purchase money paid.

N. After the application form has been signed there must be supplied in the case of—

#### COLONIAL AND FOREIGN COMPANIES

The Certificate of Incorporation or Act of Parliament or other similar document.

Two copies of the Statutes or Articles of Association or notarial translations of the same.

A certified list of present shareholders.

A specimen of the share certificate.

Copies of all agreements, concessions, deeds, etc., or notarially certified printed translations of the same.

A certified copy of last published report and accounts, or translation of same.

Official evidence of quotation in the country to which they belong or where the issue has been made.

A short history of the establishment and progress of the Company from its incorporation to the present time, including particulars as to the issue of the capital.

A declaration stating—

(1) The number of shares allotted.

(2) The amount per share paid in cash.

(3) That the share certificates have been or are ready to be issued.

(4) That no impediment exists to the settlement of the account.

O. After the application form has been signed there must be supplied in the case of—

#### RECONSTRUCTED COMPANIES

The Certificate of Incorporation and the certificate that the Company is entitled to commence business.

A statement of the plan of reconstruction together with certified



copies of all resolutions passed and circulars issued in connection with the reconstruction.

The Allotment Book with a summary signed by the Chairman and Secretary.

The allotment letter and the date when posted.

A specimen of the share certificate.

Two certified copies of the Memorandum and Articles of Association.

Certified printed copies of all contracts, agreements, etc.

Copies of all contracts relating to the issue of fully or partly paid shares.

A statutory declaration by the Chairman and Secretary stating—

(1) That all documents required by the Companies Acts, 1908 and 1917, have been duly filed with the Registrar of Joint-Stock Companies and dates of filing.

(2) The authorized capital of the Company.

(3) The number of shares to which shareholders in the old Company were entitled ; the number and distinctive numbers of shares unconditionally allotted to such shareholders ; and the amount per share (*a*) paid thereon in cash, and (*b*) credited as paid up.

(4) The number and distinctive numbers of shares applied for by and allotted unconditionally to the public, and the amount per share (*a*) credited as paid up, and (*b*) paid thereon in cash.

(5) That the shares have been or are ready to be issued.

(6) That no impediment exists to the settlement of the account.

*P.* After the application form has been signed the following documents must be supplied in the case of—

## LOANS

Details of the creation of the loan and the authority under which it is issued, including authenticated copies of concessions, etc., with notarially certified translations.

The authority to the agents or contractors to receive subscriptions.

A certified copy of the prospectus.

Evidence that all bonds issued and payable abroad bear the signature of some properly authorized person.

A specimen bond together with a bond duly executed or scrip certificate if issued.

Statutory declaration by the agents stating—

- (1) The amount allotted unconditionally to the public.
  - (2) The numbers and denomination of those bonds which bear the autographic signature of the London agents or contractors.
  - (3) That the required amount, viz. £     per cent, has been paid thereon in cash.
  - (4) That the scrip or bonds have been or are ready to be issued.
  - (5) That no impediment exists to the settlement of the account.
- Q. After the application form has been signed the following documents must be supplied in the case of—

#### BONDS QUOTED ABROAD

Official evidence of quotation in the country to which they belong or where the issue has been made.

Notarially certified printed translations of all prospectuses and of the Laws creating and authorizing the loan.

A specimen bond together with a bond duly executed.

An official certificate setting forth:—

- (1) The authorized and issued amounts of the loan and the terms of issue.
- (2) The distinctive numbers and denomination of the bonds.
- (3) Evidence that all bonds bear the autographic signature of some properly authorized person.

By Section 281 of the Companies (Consolidation) Act, 1908, if any person in any return, report, certificate, balance sheet, or other document required by or for the purposes of any of the *provisions of this Act* specified in the Fifth Schedule, wilfully makes a statement false in any material particular knowing it to be false, he shall be guilty of misdemeanour and shall be liable on conviction on indictment to imprisonment for a term not exceeding two years with or without hard labour, and on summary conviction to imprisonment for a term not exceeding four months with or without hard labour, and in either case to a fine in lieu of or in addition to such imprisonment as aforesaid.

Provided that the fine imposed on summary conviction shall not exceed one hundred pounds.

The provisions of the Act referred to are as follows—

The conclusiveness of certificates of incorporation (s. 17).

Restriction on appointments or advertisement of directors (s. 72).



Restrictions on commencement of business (s. 87).

Returns as to allotments (s. 88).

Statutory meetings (s. 65).

The particulars as to directors and mortgage debt and a statement in the form of a balance sheet in the annual summary (s. 26).

The appointment and remuneration and powers and duties of auditors (ss. 112, 113).

Obligations of companies where no prospectus is issued (s. 82).

Registration of mortgages and charges in England and Ireland (s. 93).

Filing of accounts of receivers and managers (s. 95).

Notice by liquidator in voluntary winding-up of his appointment (s. 187).

Rights of creditors in a voluntary winding up (s. 188).

Requirements as to Companies established outside the United Kingdom (s. 274).

Annual report by Board of Trade (s. 283).

## CHAPTER IX

### THE CONTRACT—PRINCIPAL OR CLIENT AND AGENT OR BROKER

It is proposed in this and the two following chapters to explain the nature of the contract to buy or sell stocks, shares, or bonds on the Stock Exchange, and to consider the respective liabilities arising from the contract entered into between a principal and a broker and the resultant liabilities between broker and jobber and jobber and principal, and the determination of the contract.

A broker's principal business consists in the execution of his client's orders to buy, sell, carry over, or continue bargains in stocks and shares. He, however, not infrequently collects coupons and takes charge of securities on behalf of his client and acts in other ways. Moreover, in his business he is frequently called upon to advise or to give information as to securities—either with a view to buying or selling, or for other purposes. If he is employed either to buy or sell on behalf of a client, he is also authorized to make a binding contract on his behalf. In the ordinary course of business, when a broker has received an order that may arrive by letter, telegram, telephone message, or may be given verbally, he proceeds to execute it. The way in which it is executed has been already sketched out in referring to the course of a Stock Exchange transaction. If the client gives the broker a limit, of course he executes it within the limit given, otherwise he exceeds his authority, and the client is entitled to repudiate the bargain. If he is able to execute it, he duly advises his client of its execution and forwards the contract note to him. When the client calls personally to give an order, it is generally advisable for the broker to obtain written instructions, to prevent any possibility of subsequent dispute.

It will be seen that the order and the acceptance of the order by the broker constitute a contract. Thus, the broker who has been asked to buy or sell shares buys or sells them. He has performed what he has been requested to do, and is entitled to bind his client by the bargain that he has duly made on his behalf. Therefore a note of the contract, which could be no more than



evidence of the contract, has not at all times been absolutely essential. Some contracts, however, were always required by statutory enactments to be in writing, but this was never the case with stocks and shares. Stocks and shares were not considered as goods, wares, and merchandise, the sale of which required evidence of part payment, earnest money, or memorandum in writing where the price was over £10 to render the contract enforceable (*Humble v. Mitchell* (1839), 11 A. & E. 205; *Duncuft v. Albrecht* (1841), 12 Sim. 189; *Bowlby v. Bell*, (1846), 11 3 C. D. 284). Nor was Railway scrip considered to fall within the section (*Knight v. Barker* (1846), 16 M. & W. 66). Moreover, contracts for the sale of shares of companies holding interests in land, etc., were held not to fall within the 4th section of the Statute of Frauds. Debentures, however, charging a company's property, where the company possessed leasehold property, have been held to be interests in land, requiring that the contract must be made in writing (*Driver v. Broad* (1893), 1 Q.B., 744,) to render it enforceable. But now by the Finance Act, 1909-10 (10 Edw. 7, c. 8, s. 78 (1)), any person who effects the sale or purchase of any stock or marketable security of the value of £5 or upwards as a broker or agent, and any person who, by way of business, deals or holds himself out as dealing as a principal in any stock or marketable security to the value of £5 or upwards, must forthwith make and execute or transmit a contract note to his principal, or to his vendor or purchaser as the case may be, and if a broker fails to do so he is liable to a penalty of £20, and has no legal claim to charge his brokerage; but a contract note is unnecessary where the principal is acting as broker or agent for a principal, or where the sale or purchase of stock or marketable security is under the value of £5. The absence of the receipt of a contract note puts the client in an embarrassing position. Therefore it is of the utmost importance that either a contract note should be sent or the client should be advised that the order has not been executed. There are many instances, however, where the client instructs the broker to buy or sell when a limit has been reached. In such cases considerable time may elapse before the broker can execute his commission. It is obviously unnecessary to advise the client day by day that his order is not executed; nevertheless some information is usually given.

Before stating the form the contract note usually takes, the legal

position of client and broker must be ascertained. The client, in giving the order, knows, or is assumed to know, that the broker must execute it according to the rules and regulations of the Stock Exchange. Thus, in *Sutton and others v. Tatham* (10 A. & E., 27), where a broker was instructed to sell 250 shares by his client, although 50 shares were meant, the broker entered into a contract with another broker. On the next day the client informed his broker of the mistake, and asked if the bargain could not be made void. The broker answered 'No,' and the shareholder then said he must leave the matter in his hands, to do the best he could. The broker paid the difference and sued the client. Mr. Justice Littledale, in deciding in the broker's favour, said a person who employs a broker must be supposed to give him authority to act as other brokers do. It does not matter whether or not he himself is acquainted with the rules of the Stock Exchange.

In *Coles v. Bristowe* (L. R. 4 Ch. App. 3) the plaintiff, a holder of 200 shares in a company, had made a contract through a broker with a jobber. The jobber, in accordance with the custom of the Stock Exchange, substituted the names of seventeen transferees to whom the shares were transferred in different parcels. The plaintiff's broker prepared the deeds of transfer which the plaintiff executed, and handed these, with the shares, to the jobber who paid the agreed price. The Company, having stopped payment, was ordered to be wound up. The transferees, through their brokers, had paid their purchase-money to the jobber and had received, but not executed, the deeds of transfer. The plaintiff sued the jobber, filing a bill in equity, claiming to be indemnified. Since, however, the plaintiff had made his contract through the broker, who had dealt according to the Stock Exchange rules, the jobber was held not liable, as by the rules a jobber is released from liability when he has paid the purchase-money to the vendor and given the names of the transferees, who have received their transfers and through their brokers paid the jobber. The plaintiff was taken to have made his contract through his broker on the Stock Exchange, and was so bound by the rules which released the jobbers. See also *Grissel v. Bristowe* (L. R. 4 C. P., p. 36).

In *Harker v. Edwards* (1887), 57 L. J., Q. B. 147, Lord Esher, M.R., said "the Stock Exchange is a market and the defendant knew it to be a market. The result is that when he gave the plaintiffs



authority to sell he gave them by implication authority to make a contract of sale in the form and on the conditions issued on the Stock Exchange. In other words, he impliedly gave them authority to make the contract in the very form in which this contract was made, namely, in their own names and according to the rules of the Stock Exchange. It may be that the defendant did not know all the rules, but he knew that the Stock Exchange was a market, and he knew or ought to have known the rule by which the plaintiffs must make the contract in their own names, and in so doing make themselves personally liable as principals." In *Benjamin v. Barnett* (1903), 19 *T. L. R.* 564, it was held that contracts on the Stock Exchange are made subject to the rules and regulations, and that such rules and regulations are incorporated in the contract and are binding upon the public who instruct their brokers to deal. But a client would not be bound by an unreasonable rule not known in fact to him, although a broker might ; nor would he be bound by an illegal custom. An instance of an illegal custom is found in the case of *Neilson v. James* (1882), 9 *Q. B. D.*, 546, where the defendant, a broker, had undertaken to sell shares of a joint-stock bank for the plaintiff, a shareholder. The shares were sold to a jobber, and an advice note of the sale was sent to the plaintiff, but the bought and sold notes between the defendant and the jobber omitted to state the name of the registered proprietor as required by 30 and 31 Vict. 29, s. 1 (Leeman's Act), in consequence of which the contract was void. The omission was in accordance with the Stock Exchange custom. The bank stopping payment, the plaintiff became liable for calls. It was held the broker's duty was to make a valid contract, and as he had not done so, the Stock Exchange custom being unreasonable and illegal, the defendant was liable to pay by way of damages the price at which the shares were sold. (See also *Pollock v. Stables*, 12 *Q. B.*, 765 ; *Robinson v. Mollet* (1874), *L. R.*, *H. L.*, 802 ; *Blackburn v. Mason* (1893), 68 *L. T.*, 510).

A purchase by a broker of a letter of allotment, when the principal client had ordered shares, letters of allotment being dealt with on the Stock Exchange, was held to be within the terms of the broker's authority (*Mitchell v. Newhall* (1846), 15 *M. & W.*, 308).

The Stock Exchange rules have been held admissible in evidence between parties, some of whom were members of the Stock

Exchange, to explain what would be reasonable time for delivery of shares (*Stewart v. Cauty* (1841), 8 *M. & W.*, 160).

Having shown the nature of the broker's authority, in the absence of special instructions, it is next necessary to explain the effect of special instructions. These bind the broker, although obviously they would not bind third parties, who would presume that the broker was acting in the usual way, and following the practice of the market in his dealings with them.

When an order is given it should be clear and unambiguous in its terms, for if it is possible to place two constructions on it, the broker acting honestly will not only escape liability, but will render his client liable on his view of the construction (*Loring v. Davis* (1886), 22 *Ch. D.*, 625, following *Ireland v. Livingstone* (1872), 5 *H. L.*, 395). It is a fair answer to an attempt to disown the agent's authority to tell the principal that the departure from his intention was occasioned by his own fault, and that he should have given the order in clear and unambiguous terms.

An order given lasts till the next settling day, for such would appear to be a reasonable time.

In *Lawford v. Harris* (1896), 12 *T. L. R.*, 275, a broker received instructions to sell certain shares at fixed prices and to telegraph to his client at an address which would be his address for four weeks when the sale had been effected.

Next day the broker received instructions to sell the shares at once at the same prices.

The current account ended on the 25th of the month, and two days later the broker sold at the prices on the 27th of the month. The shares rising in value, the question was: Had the broker authority to sell after the end of the current account?—and it was decided that he had not. Of course, a client may give what instructions he pleases, and so may bind himself. All that is referred to here is the implied authority. The net result is that where a limit is placed upon the price at which the broker may deal, the order—in the absence of any special arrangements—holds good only during the currency of the account for which it was given.

As between client and broker, the general rules of agency are applicable. Thus where the broker's authority is limited, a party who, without notice of the existence of the limitation, enters into a contract with the broker acting within the apparent scope of



his authority need not inquire into the broker's authority, but may recover under his contract. This, however, is not the case where the broker had no authority at all, for then no action could be brought against the principal. If the principal is made liable in a case where a broker has exceeded the limits of his authority, he would be entitled to recover against the broker. Thus when a broker was handed securities for the purpose of raising a certain amount of money on them, but raised a sum in excess of the authority conferred on him, the lender who had taken in the shares without knowledge of the limitation of authority was held entitled to hold the securities till the whole of the agent's indebtedness had been made good (*Mocatta v. Bell* (1854), 24, *Beav.* 585; *Bentinck v. London and Joint-Stock Bank* (1893), 2 *Ch.* 120).

A broker may accept and execute an illegal order, but he does so entirely at his own risk : thus where the plaintiff had been employed to purchase and had purchased shares in a certain company for the coming out, which under an old Act was illegal, he was held neither entitled to recover money paid on the defendant's behalf nor his commission (*Josephs v. Pebrer* (1825), 3 *B. & C.*, 639). So again, notwithstanding that articles authorize a company to purchase its own shares, such a transaction is illegal (*Trevor v. Whitworth* (1887), 12 *A. C.*, 409). A broker purchasing for a company would do so at his peril. Thus if A, the broker of a company, buys shares on behalf of a company, the company could repudiate the transaction as *ultra vires*. (See also *re London, Hamburg and Continental Exchange Banks, Zulueeta's claim* (1870), *L. R.*, 5 *Ch.* 444). A broker apparently is not bound to accept the whole of an order given to him by a client. He may accept part only. Thus in *Benjamin v. Barnett* (1903), 19 *T. L. R.*, 564, a broker was instructed to buy 70 shares in a new company, and he purchased them for the special settlement. The special settling day being fixed for April 7th, the seller had according to the rules ten days from that date for delivery. Owing to difficulties over the transfer, the broker received only 20 of the shares from the jobber on April 18th, which he tendered to his client on April 28th. The client refused to accept on the ground that his instructions were to buy 70 shares, and also on the ground that they had not been delivered in time. The broker was ordered by the Committee to pay for the remaining shares on delivery, and he paid for them on May 4th. It was decided that

the amount paid for the 20 shares was a liability properly incurred, but not to the amount paid for the 70 shares, as the decision of the Committee was not such a decision as would bind the client.

The practice of buying blocks of shares in execution of several orders is a common one on the Stock Exchange. Nevertheless it has occasioned some difficulty as to how far it may be considered legal. The difficulty arose through the decision in the case of *Robinson v. Mollett* (1874), *L. R.*, 7 *H. L.* 802.

There the plaintiffs were instructed as tallow brokers to buy tallow in the market. They purchased it, together with other orders, in one block, and tendered the exact amount out of the general purchases to the defendant. The defendant declined to accept it, and the plaintiff sold at a loss, on which he brought an action. It was decided that the plaintiffs, acting as brokers or agents, had made no binding contract. In *Scott v. Godfrey* (1901), 2 *K. B.* 726, the question was again considered in a Stock Exchange transaction. There the defendant had employed a broker to purchase for him 225 shares, and afterwards to carry them over. The shares were carried over with other shares in a single contract. 125 were apportioned to the broker's own account, 225 to the defendant, and the rest to other clients. The broker having been declared a defaulter, his transactions with the plaintiffs, who were jobbers on the market, were closed by the official assignee. The defendants when communicated with declined to be bound by the contract, contending that the transaction was closed by the broker's default at the price current on the day of failure. The plaintiffs then sold the shares at the best prices obtainable, and sued the defendant.

The following evidence of the Stock Exchange custom was given: That where a broker is instructed by several clients to buy shares in the same company, it is the practice of the Stock Exchange for the broker to enter into one contract with the jobber for the total number of shares, and that by the practice of the Stock Exchange the jobber is bound to know that the contract might be made by the broker on behalf of more clients than one, and if the contract was made for several clients the jobber is compelled to carry out the contract with each. That if in such a contract only one of the broker's clients required delivery of the shares purchased, the jobber was bound to carry out the contract with that particular client, and that this practice is applicable to carrying over



transactions as well as to the completion of contracts of purchase. Further, when a broker becomes a defaulter it is the custom for his clients to complete the transaction with the jobber direct, although the orders of several clients might have been included by the broker in one contract with the jobber, and that the same rule would apply if the broker were to include a transaction of his own with those of his clients. The learned judge left five questions to the jury, which were respectively answered as follows: (1) Is there a custom or practice of the Stock Exchange by which brokers lump together the orders of their clients and execute them by means of one contract with a jobber? Yes. (2) Did the defendant give his order to his broker on the terms that it might be executed in that way? Yes. (3) Is there a further custom or practice by which the jobber and each client of the broker became bound to each other to carry out that part of the contract applicable to the particular client's order? Yes. (4) Did the addition to the carrying-over order of the broker's own bargain in any way affect the price? No. (5) Was the case within the custom? Yes, but it is not expedient for a broker to include his own bargain in an order executed for his clients.

In the course of his judgment Mr. Justice Bigham stated the proposition raised by the defendant thus: "It is that, having given a mandate to his broker to carry over 225 shares, that mandate was in fact never carried out; that the transaction by which a larger number of shares was carried over could not be regarded as a carrying out of his mandate; and that therefore, as his agent had not carried out the only transaction which he was authorized by him to enter into, there was no contract between the plaintiff and the defendant.

. . . No writing passed between the plaintiffs and the broker, nor is it usual that any writing should pass in such a case, the practice being for each to make a note of the transaction in his own books, which is the only record of the transaction. The broker, after entering into this transaction with the plaintiffs, went back to his office and made an entry of it in his own book; on the one side the entry showed that he had carried over 925 shares with the plaintiffs, and on the other side that 925 shares had been carried over for particular clients, the number of shares carried over being inserted against each name; thus the defendant's name appears in the broker's book as that of the person for whom he had carried over 225 shares with the plaintiffs, being part of the 925 shares

carried over with them. The defendant was then advised by his broker of the carrying over."

Mr. Justice Bigham went on to say that since the action was one of contract, whether there was a contract or not, was, in his opinion, a question of the intention of the parties. "When the broker went to the plaintiffs and carried over the shares he intended to make a valid contract on behalf of defendant with the plaintiffs as to 225 of them. He intended to do what the defendant had directed him to do. The plaintiffs intended to make with the broker any number of contracts which he might be authorized by his different principals to make. . . . Thus there was a mutual intention on the part of the plaintiffs and the broker to bring about privity of contract between the plaintiffs and the broker's respective clients. I think myself that was enough to establish the necessary privity. . . . In my opinion, privity was clearly established by the fact that authority was given by the defendant to his broker to create the privity, that the latter intended to create it, and that the person with whom he made the bargain intended that it should be created." The case of *Robinson v. Mollett* (*supra* p. 159) was distinguished on the ground that the custom there only applied to dealings between brokers themselves, and that it was not known to the client, and that therefore no contract was made. There was a vague intention to appropriate some part of the tallow in supposed execution of their client's order, but that was not sufficient, whilst here there was an actual appropriation. In *Levitt v. Hamblet* (1901), 2 K. B., 53, A. L. Smith, M.R., said: "Apart from any consideration of the usage and rules of the Stock Exchange, and assuming that a proper appropriation has been made of the shares by the brokers, it is, in my judgment, clear to demonstration that the jobbers can sue the client of the brokers on the ground that the client was the undisclosed principal of the brokers, and that when the brokers became defaulters, and the jobbers discovered who was the principal they had a right to call upon the principal to fulfil the contract made through the brokers."

With reference to the validity of the Stock Exchange usage which was proved in *Scott v. Godfrey*, the Court of Appeal decided (*Beckhusen & Gibbs v. Hamblet*, (1901), 2 K. B., 73) against it on the ground that there was not sufficient evidence of it in that case. See further



on this point *Ex parte Rogers* (1880), 15 *Ch. D.* 207, and *May v. Angeli* (1898), 14 *T. L. R.*, 551.

Apart from the orders that brokers receive directly or personally, clerks who are paid a commission frequently receive and introduce to their firms orders from their friends and connections. It is an important matter for brokers to know how far they are bound by the acts of the clerks. The authority that the clerk receives may be extremely limited or it may be large, but except in rare cases the person introduced by his medium is ignorant of the nature of the authority. In *Spooner v. Browning* (1898), 1 *Q. B.*, 528, a clerk in the employment of the defendants was allowed a commission upon business introduced to them and accepted by them. He introduced two orders from the plaintiff which were accepted by the defendants through their clerk sending bought notes signed by them. The plaintiff made out the cheques to the firm. Subsequently he gave a third order to the clerk, who transmitted it to the defendants, and they executed it and sent the bought notes to the plaintiff. The plaintiff drew a cheque in favour of the clerk, which the clerk handed to the defendants. The defendants, before accepting, did not intimate whether they accepted or not. Subsequently, orders were given to the clerk, who forged bought notes and handed them to the plaintiff, cheques being drawn in payment to the clerk, who cashed them and misapplied the proceeds. It was held that there was no evidence for a jury of a holding out by the defendants to the plaintiff of the clerk, as authorized to enter into contracts on their behalf, and therefore the defendants were not liable in respect of orders subsequent to the first three.

In the course of his judgment A. L. Smith, L.J., said the question is narrowed to this : " Does the fact of a principal allowing an agent to obtain orders for him, which he may or may not execute as he pleases, as the person giving the order well knows, afford any evidence that he holds out the agent as having authority either to bind him by contracts, or to represent that he, the principal, will execute the orders brought to him by the agent ? Now it is clear that on receipt of the first order brought by the clerk, they were entitled to refuse it, and were under no obligation whatever to communicate to the plaintiff whether they would execute the order or not. . . . But it is said because they executed the first order (and the two subsequent orders) their position became altered and that by executing

these orders they thereby held out the agent as having authority as regards subsequent orders to bind them by contracts, or at any rate held him out as representing that they (the defendants) would execute the orders thereafter brought to them by him unless they communicated to the plaintiff that they would not execute the order so brought." The learned Lord Justice then goes on to express his opinion that there was no legal obligation on the part of the brokers to communicate with the plaintiff, and that there was no evidence fit to be left to the jury that the defendants held the clerk out as their agent.

Having so far discussed the nature of the order, an example may be given of the usual form the contract takes between client and broker.

	London, E.C.2., .....	19
<b>Bought</b> for .....		
<i>(Subject to the Rules of the London Stock Exchange.)</i>		
.....@.....	£	
....."	"	
....."	"	
....."	"	
....."	"	
....."	"	
.....	Commission ... ..	
.....	Contract Stamp ..	
For the .....	Account, 19 ..	
	£	

This contract stamped and signed by the broker and forwarded to the client is evidence that the broker has entered on behalf of his client into a contract with a jobber to purchase from or sell to him or his nominee the amount of stocks and shares specified in the contract. This gives rise to certain obligations on the part of the client. The most important is that of indemnifying the broker



in respect of the contract. As the broker is a member of the Stock Exchange and has purchased on his client's behalf, subject to the rules and regulations, which are the customs of the Stock Exchange, the client is bound by these rules and regulations as being the customs of the market by which the broker is bound, except where such customs are illegal or unreasonable and unknown to the client. On this question reference to Leeman's Act (30 Vict. c. 29, 1867) must be made, since its provisions are habitually disregarded on the Stock Exchange, and many cases have arisen under it. It enacts that all contracts, agreements, and tokens of sale and purchase which shall be made or entered into for the sale or transfer or purporting to be for the sale or transfer of any shares or share or any stock or other interest in any joint-stock banking company in the United Kingdom of Great Britain and Ireland constituted under or regulated by the provisions of an Act of Parliament, Royal Charter, or Letters Patent, issuing shares or stock transferable by any deed or written instrument shall be null and void to all intents and purposes whatsoever unless such contract, agreement, or other token shall set forth and designate in writing such shares, stock, or interest by the respective numbers by which the same are distinguished at the making of such contract, agreement, or token on the register or books of such banking company as aforesaid, or where there is no such register of shares or stock by distinguishing numbers, then, unless such contract, agreement, or other token shall set forth the person or persons in whose name or names such shares, stock, or interest shall at the time of making such contract stand as the registered proprietor thereof in the books of such banking company, and every person, whether principal, broker, or agent who shall wilfully insert in any such contract, agreement, or other token any false entry of such numbers or any name or names other than that of the firm or person in whose name such shares, stock or interest shall stand as aforesaid shall be guilty of a misdemeanour and be punished accordingly, and if in Scotland shall be guilty of an offence punishable by fine or imprisonment. Leeman's Act would not operate to avoid contracts between members of the Exchange, although it would do so in the case of non-members ignorant of the practice (*Neilson v. James*, 9 Q. B. D., 546; *Perry v. Barnett*, 15 Q. B. D., 389). "For it would not be reasonable to hold that a person is bound by a usage to make contracts contrary

to Leeman's Act unless beforehand he was told or had knowledge of it; but to strangers, who are ignorant of it, it is inconsistent with the contract of employment."

With reference to the right of indemnity, this is not merely the right to the repayment of money which the broker has been paid (*Stock & Share Co. v. Galmaye*, 8 T. L. R., 808), but a general right of indemnity in respect of obligations arising through the contract.

This has been established by a number of decisions. Thus the broker has been held to be entitled to be indemnified where he had purchased on his client's behalf shares which could not be transferred by the vendor till calls had been paid. The amount of the calls having been repaid to the vendor by the broker, ignorance of the existence of the calls did not excuse the client from being ordered to repay the broker (*Bayley v. Williams* (1849), 7 C. B., 886). See also *Bayliffe v. Butterworth* (1847), 1 Ex. 425; *Pollock v. Stables* (1848), 12 Q. B., 765. In *Chapman v. Shepherd* (1867), L. R., 2 C. P., 228, where a broker had bought shares subject to the rules of the Stock Exchange, and the contract had not been completed by transfer before the presentation of a petition for the winding-up of the company under the Companies Act of 1862, he was held entitled to recover from his client, notwithstanding Section 153, which renders transfers of shares void, after a winding-up, since the buyer would have had a right to apply to the Court of Chancery to sanction the transfers and further at the time when the broker had made the payments the contracts had not been ascertained to be void. The effect of Section 131 was considered in the case of *Biederman v. Stone* (1867), L. R. 2 C. P., 504. There the plaintiff had been employed to sell shares after a company had commenced to be wound up voluntarily, as Section 131 (now section 205 of the Act of 1908) provides that whenever a company is wound up voluntarily, the company from the date of the commencement of the winding-up ceases to carry on business, and all transfers of shares, except transfers made to or with the sanction of the liquidator, and every alteration in the status of the members of the company made after the commencement of the winding-up are void, and in the case of a winding-up by or subject to the supervision of the Court, every disposition of property (including choses in action) of the company and every transfer of shares or alteration in the status of the members made after the



commencement of the winding-up, shall, unless the Court otherwise orders, be void. The defendant declined to execute the transfers on the ground that the sanction of the liquidator had not been obtained to the transfers. The plaintiff in consequence, under the rules of the Stock Exchange, was compelled to furnish to the buyer other shares for which he paid an advanced price. The question raised was whether the defendant was excused from executing the transfer because the company was in course of winding-up at the time of the contract, the case being thus distinguishable from the former case of *Chapman v. Shepherd* (1867), *L. R.*, 2 *C. P.* 228, where the company was ordered to be wound up subsequently to the order to purchase shares. The Court on demurrer entered judgment for the plaintiff, since, as the statute made the execution of a transfer without the sanction of the liquidators only void, but not illegal, the defendant was liable to an action for refusing to execute the transfer, and that whether it was the buyer's or seller's duty to obtain the sanction of the liquidator. Again, where a broker on the instructions of his client had bought shares, which were not officially quoted, in a company registered in the Transvaal for the coming out, and a special settling day was appointed, the broker was held entitled to receive the money paid under the Stock Exchange rules (*Hunt v. Chamberlain* (1896), 12 *T. L. R.*, 186).

It may be said generally that the right to indemnity extends to all liabilities incurred by the brokers, even though they may be remote. Thus a call paid to a seller (*Bayley v. Williams* (1849), 7 *C. B.*, 886), a dividend paid to a seller but ordered by the Committee to be paid by the seller's broker to the purchaser (*Harker v. Edwards* (1887), 57 *L. J.*, *Q. B.*, 147) entitle the broker to indemnity in respect of the payment.

In *Lacey v. Hill* (*Crowley's claim*, *L. R.*, 18 *Equity*, 182), a question as to the brokers' right of indemnity arose where they had been hammered and subsequently re-admitted on payment of 6s. 8d. in the £. It was argued that the brokers could only recover an amount actually paid, and not the whole amount for which they were liable previously to their re-admission to the Stock Exchange, since the indemnity was only implied. Sir G. Jessel, M.R., in the course of his judgment dealing with this argument said: "If the client has had the stock sold for him, and is credited with the

proceeds, what difference can it make to him whether the brokers paid for it, or whether the persons who sold it have chosen to give them credit for that amount? He has had the stock, and he has had it sold for him; that is, he has been credited with the proceeds. Suppose a man buys a horse or a cargo of corn for his principal, and before the day of the delivery sells, crediting the principal with the proceeds on account, then, although the principal has not the thing delivered to him, he has the benefit of the sale by being credited with it on account. It appears to me that that is the true view of the present transaction, and it is utterly immaterial whether the broker, who has become personally liable for the amount, has paid at all. But in addition to this, it appears to me the case of a defaulter on the Stock Exchange differs from the case of a bankrupt by the English law. Such a defaulter obtains no discharge from his debts. All that happens is this: Unless he pays 6s. 8d. in the £ he is not admitted into the Stock Exchange again, and remains liable to actions by all his creditors. If he pays 6s. 8d. in the £ and is re-admitted then the Stock Exchange Committee will not allow any member of the Stock Exchange to sue him without their permission. The object of this is to secure that his assets shall be fairly distributed, and as I understand it, every year a man who has been a defaulter is called upon to show whether he can pay any more, and if he can pay any more he does so till he liquidates the whole debt. So that in point of fact if these gentlemen recover in this suit they will actually have to distribute what they recover amongst their creditors on the Stock Exchange, and will be in no wise released from the payment. Last of all it is said that this is a liability as distinguished from an actual payment, and that the agent or person entitled to be indemnified has no remedy. Whatever may be the case at law (as to which I say nothing, because it is not necessary), it is quite plain that in this Court anyone having a right to be indemnified has a right to have a sufficient sum set apart for that indemnity. It is not very material to consider whether he is entitled to have that sum paid to him, or whether it must be paid direct over to the creditor. If the creditor is not a party, I believe that it has been decided that the party seeking indemnity may be entitled to have the money paid over to him. As to the observation that he may compromise for less, the answer is that the person liable to indemnify can go to the creditor and set him right. It is his own



fault that the liability remains. But he is certainly in equity liable to indemnify, and liable to indemnify to the extent of the liability incurred by the agent on his behalf, and that is quite sufficient to substantiate this proof against this estate." Though, as will be seen, the right of indemnity is large, nevertheless where an account has been closed subsequent to a carry-over by reason of the broker's inability to meet his engagements there is no right to indemnity (*Duncan v. Hill* ; *Duncan v. Beeson* (1873), *L. R.* 8 *Ex. Ch.* 242), although it would be otherwise if the loss arose without any personal default of the jobber (*ibid.*, p. 248).

It will be noticed that there is some difference in the custom as stated ; for in the last case reference is made to the principal not being in default. See also *Beckhuson v. Hamblet* (1900, 2 *Q. B.* 23). Where the client is in default and the broker becomes a defaulter, not only by reason of the client's defaults, but from other causes, the client is under no implied liability to indemnify the broker except in respect of his original default. Thus, if further loss is occasioned owing to the broker not being supplied with funds by the client, the client is not liable if the broker's defaults arose only in part by reason of the client's default (*Duncan v. Hill* (1873), *L. R.*, 8 *Ex. ch.* 242). In *Hartas v. Ribbons* (1889), 22 *Q. B. D.* 254, the broker who was in default informed his client of this Stock Exchange custom, and told him that he could either have his contract completed or he could accept the official prices. He said that he would do the latter. On the broker suing him for the difference, it was held that the client was bound to indemnify the plaintiff since he had ratified the contract.

Bowen, L. J., in the course of his judgment, said : "It is suggested that there was not any consideration for such implied promise (i.e. to treat the indemnity as covering the loss on the day of the broker's default). I think there was. The defendant got rid of the risk to which he would have been subjected if the account had been kept open. It appears to me that the effect of what took place was that he elected to treat what had been done as done on his behalf, and to ratify his agent's action instead of keeping the account open and carrying out the contract on the account day. But for that fact I think the case might have been within the decision of *Duncan v. Hill*, but, under the circumstances, I think the case is distinguishable."

In *Wilson & Co. v. Finlay* (1913), 1 Ch. 565, it was held that where there is an open account between a broker and his client, the broker is entitled, on the death of his client, to close the account at once and to sell the shares in respect of which he has entered into contracts on behalf of his client.

Another question arises on the default of the broker. Can the jobber enforce the contract against the broker's client, the principal? In *Beckhuson v. Hamblet* (1900), 2 Q. B. 18, Kennedy, J., thought that he could, but as the broker had executed the order *en bloc* with other orders, he held that under the particular circumstances no contract had been made, but when the brokers had allocated different contracts with different jobbers, it was held that this established liability. (See also *Levitt v. Hamblet*, 16 T. L. R., 436.)

So far the broker's right to be indemnified by his client has been more particularly referred to, but what is the broker's position where he has purchased securities on his client's behalf, and the client refuses to receive the securities, or pay for them? The broker no doubt could sue for the price, but what is his position with regard to the securities? Must the broker sell them out against his principal, or is there any other course open to him to adopt? In such a case he would appear to have two courses open to him: (1) to treat the repudiation of the contract as a breach, or (2) to refuse to treat the contract as rescinded and to hold his principal to it. If he adopts the first alternative he can sue at once for damages, or an indemnity, and can close the account at once and so fix the amount of his claim, or he can keep the bargain for himself and claim from his principal the difference between the contract price and the market price at the date of his accepting the repudiation as a breach. If he elects to hold his principal to the contract then he may bring an action for a declaration that he is entitled to an indemnity. On behalf of the broker adopting the bargain when the client has refused delivery, there is this advantage for the client: that probably his loss is considerably lightened thereby, especially where there is not a free market in the shares, and some time must necessarily elapse before they can be sold. There is at present no authority upon which a broker adopting this course, and, departing from the usual course of selling the securities, could rely, however much it would be in his client's interest.



The broker is entitled to payment for his services, but he must, of course, completely perform his contract. The Stock Exchange has now established a minimum scale of charges or commission (see Appendix No. 39). This brokerage or commission should always be inserted on the contract note (*Finance Act, 1910, sec. 77 (1)*).

The Duties, Obligations, and Liabilities of the Broker to the Client now remain to be discussed.

These are the duties which every agent owes to his principal : (1) to act with good faith towards him ; (2) to perform the business with which he has been entrusted in a skilful manner.

(1) *To act with good faith towards the client.*

Many questions will arise under this head, which perhaps may not be easily answered. For instance, it is often asked if a broker in executing an order is entitled to employ another broker as principal, instead of dealing amongst the jobbers on the Market. It is obvious that there may be many instances in which such a transaction would be advantageous to the client. There is, however, no legal authority on the subject. The Stock Exchange rule 89 (2) says that a broker may not put business through for another broker. Nor may a broker execute an order with a non-member unless, thereby, he can deal for his principal to greater advantage than with a member. In such a case he may not receive brokerage from such non-member, and each contract note shall state that the bargain has been done between non-members. Business which in fact comes under this rule may not be put through a dealer's book, nor may any other procedure be adopted in order to bring such business under the provisions of Rule 89. This rule 89 (1) says that when a broker receives an order from one principal to buy and from another to sell the same security, and executes the two orders simultaneously with the same dealer, the prices agreed upon must be such as at the time of dealing are believed to be fair to both principals.

The broker, it must be remembered, is acting as an agent and not as principal, so if he desires to act as principal he must make the fullest disclosure to his client. In *Waddell v. Blockey* (1879), 4 Q. B. D., 678, a broker was ordered to buy rupee paper. The defendant sold rupee paper of his own to his client, leading him to believe that he had purchased it of third parties. The rupee paper was sold at a heavy loss. In an action by the liquidator of the client it was held

that he was entitled to damages, the measure being not the amount of the loss ultimately sustained by the client, but the difference between the price paid for the rupee paper and the price which would have been received if it had been sold in the market forthwith after purchasing it. He would be treated as acting as principal, where the client has named a limit, and he has purchased under the limit and charged at the limit. In *Thompson v. Meade* (1891), 7 T. L. R., 698, this happened, and it was held that the broker was not entitled to recover differences at all, since the loss was his own and not the principal's.

In all such cases it seems that the representation that the broker had bought on behalf of his client where he had in fact sold his own stock or shares is sufficient to render him liable to an action for misrepresentation (*Wilson v. Short* (1847), 6 Hare, 366; *ex parte, Dyster* (1816), 2 Rose, 349). If the full and fair disclosure is made by the broker, who, it must be remembered, is acting for his principal in a quasi-fiduciary capacity, the client would have his option of choosing whether to repudiate or adopt the bargain, but no adoptions would assist the broker unless he had made the fullest disclosure (*Brockman v. Rothschild* (1831), 3 Sim., 173; *Bentley v. Craven* (1853), 18 Beav. 75). If the broker should attempt to sell his own stocks or shares through the means of a third party, who was in fact a trustee for the broker, the Courts would examine into the transaction, and, on discovering that the transaction was really the broker's, would set it aside, even after the lapse of many years (*Gillett v. Peppercorne* (1840), 3 Beav. 78).

The rule applicable to all these transactions is the obvious one that the principal bargains for the disinterested skill of his agent exclusively for his benefit, and for that reason the necessity for a full disclosure arises. It is not sufficient that facts were mentioned which should have put the client upon inquiry, or that he could have found out if he made inquiries. The principle was stated in *Rothschild v. Brookman* (1829), 2 Dow and Cl. 188: "No man ought to be trusted in a situation that gives him the opportunity of taking advantage of the person who has reposed confidence in him. If such a man in such a situation performs any acts which are afterwards made the subject of legal inquiry he must suffer the consequences." Then failing, when acting for vendor and purchaser, to give specific notice to each client before he begins to deal will



cost him his right to commission and indemnity (*McDevitt v. Conolly*, 15 L. R., Ir. 500).

It is a very usual practice for brokers to give a share of the commission to a person who introduces a client or clients. The recipients of these introduction payments are known as "half-book" or "half-commission" men. This form of sharing the commission is as a rule perfectly legitimate and above criticism. But where the introducer of the business owes a duty to the client, it is in most cases extremely doubtful whether such sharing of the commission does not render both parties to it liable to the penalties prescribed by the Prevention of Corruption Act, 1906. This Act makes it a misdemeanour punishable by fine and imprisonment ; (1) for an agent corruptly to accept or obtain or agree to accept or attempt to obtain for himself or for any other person any gift or consideration as an inducement or reward for doing or forbearing to do, or for having after the passing of the Act done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business ; (2) for any person corruptly to give or agree to give or offer any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having after the passing of the Act done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business ; (3) for any person knowingly to give to any agent, or for any agent knowingly to use with intent to deceive his principal, any receipt, account, or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead his principal. Cases 1 and 2 are hardly likely to arise in the conduct of ordinary Stock Exchange transactions ; but case 3 might easily occur where an intermediary who receives a share of the commission owes a duty to the principal. In cases where the broker has any knowledge of the relationship between the principal and the intermediary who claims or receives a share of the commission, it would be advisable for him to show the sharing of the commission on the face of the contract note. This would relieve him from all suspicion of intending to deceive

the principal. Several of the banks which share commissions in this way are insisting on such disclosure on the contract note.

It is probable, however, that the Act will rarely be found operative in practice in respect of the third case, owing to the difficulty of proving the various knowledges and intents. But it must be remembered that apart from the Act the broker would be liable at common law to make good all loss or damage to the principal which was the natural result of his sharing the commission without the principal's knowledge or consent with an intermediary who owed a duty to the principal.

By rule 199 (1) of the Stock Exchange Rules dealing with commissions a broker may share his commission with an agent provided that (except in the case where such agent is his remisier or a clerk in his employment) the share of the commission actually retained by him is not less than one half of the minimum scale as laid down in Appendix 39 (*infra*) except as provided in clause (5) of this rule and in rule 195.

Clause (5) declares that in the case of a change of investments made under Clause (1) of Rule 196, a broker may share commission with an agent on both sale and purchase, provided that (except where such agent is the broker's remisier or a clerk in his own employment) the share of commission actually retained by the broker is not less than one-half of the minimum scale laid down in Appendix 39 on the side yielding the larger amount, and on the other side not less than one-half of the reduced commission allowed by Rule 196, Clause (1). Clause (1) of Rule 196 declares that on a change of investments for the same principal during the same account or the account immediately following, a broker may at his discretion, if the securities have not been continued, charge commission at a rate not less than the scale as laid down in Appendix 39 on one transaction, and a reduced commission of not less than half that rate on the other. The full rate must be charged on the side which yields the larger amount. It may now be convenient to consider the Stock Exchange Rules as to commission.

#### COMMISSIONS

Minimum scale of Commission (as set out in Appendix 39).

Securities of or guaranteed by the British or Indian Government having a currency of not more than twelve years in bargains of not less than £20,000 stock	}	1% on stock.
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Consols $2\frac{3}{4}\%$ and $2\frac{1}{2}\%$ Annuities	$\frac{3}{16}\%$ on stock.
Other British Government Securities . . . . .	} $\frac{1}{4}\%$ on stock.
Indian Government Stocks . . . . .	
Metropolitan Consolidated Stocks . . . . .	
London County Consolidated Stocks . . . . .	
Colonial Government Securities . . . . .	
County Corporation and Provincial Securities (British, Indian, or Colonial) . . . . .	
Bank of England and Bank of Ireland Stock	$\frac{1}{4}\%$ on money.
Foreign Government and Corporation Bonds	} At discretion.
Price 1 or under	
Foreign Railways and other Bonds to Bearer	} $\frac{1}{32}\%$ on stock.
Price 1 or under	
Foreign Government and Corporation Bonds	} $\frac{1}{8}\%$ on stock.
Price 5 or under	
Foreign Railways and other Bonds to Bearer	} $\frac{1}{8}\%$ on stock.
Price 5 or under	
Foreign Government and Corporation Bonds	} $\frac{1}{8}\%$ on stock.
Price 10 or under	
Foreign Railways and other Bonds to Bearer	} $\frac{1}{8}\%$ on stock.
Price 10 or under	
Foreign Government and Corporation Bonds	} $\frac{1}{8}\%$ on stock.
Price 20 or under	
Foreign Railways and other Bonds to Bearer	} $\frac{1}{4}\%$ on stock.
Price 20 or under	
Foreign Government and Corporation Bonds	} $\frac{1}{4}\%$ on stock.
Price over 20	
Foreign Railways and other Bonds to Bearer	} $\frac{1}{2}\%$ on money.
Price over 20	
Registered Stocks	

Shares registered or Bearer (other than shares of \$50 or \$100 denomination dealt in in the American Market)—

Price	£ s. d. 1 or under	£ s. d.	at discretion. s. d.	
Over	1 — to	2 — .	$\frac{1}{2}$	} per share.
Over	2 — to	3 6 .	$\frac{3}{4}$	
Over	3 6 to	5 — .	1	
Over	5 — to	15 — .	$1\frac{1}{2}$	
Over	15 — to	1 10 — .	3	
Over	1 10 — to	2 — .	$4\frac{1}{2}$	
Over	2 — — to	3 — — .	6	
Over	3 — — to	4 — — .	$7\frac{1}{2}$	
Over	4 — — to	5 — — .	9	
Over	5 — — to	7 10 — .	1 —	
Over	7 10 — to	10 — — .	1 3	
Over	10 — — to	15 — — .	1 6	
Over	15 — — to	20 — — .	2 —	
Over	20 — — to	25 — — .	2 6	
Over	25 — —		$\frac{1}{2}\%$ on money.	

Shares of \$50 or \$100 denomination dealt in in the American Market—

Price \$5 or under		at discretion.		
		s.	d.	
Over \$5 to \$25	.	.	6	} per share.
\$25 to \$50	.	.	9	
\$50 to \$100	.	.	1	
\$100 to \$150	.	.	1 6	
\$150 to \$200	.	.	2	

With 6d. rise for every \$50 or portion thereof in price.

Options for more than one account.

As on bargains

Options for one account or less

Bargains in partly-paid stocks or shares of new issues

Bargains in rights for cash

Powers of Attorney for inscribed stock

Probate and other valuations

Securities made up or made down

Short-dated securities (having five years or less to run)

Transfers of stocks and shares

At discretion.

Small Bargains—no lower commission than £1 to be charged except in the case of—

(a) Transactions amounting to less than £100 in value on which a commission of not less than 10s. must be charged, or

(b) Transactions amounting to less than £20 in value on which a commission of not less than 5s. must be charged.

This scale applies to (1) all transactions in which the consideration money is £2,500 or under, subject to this—that on a change of investment under Rule 196, the provisions of Rule 197 may not be applied.

By Rule 197 (1). On any transaction in which the consideration money is £2,500 or under, the full commission set out above must be charged. In the case of a transaction in which the consideration money exceeds £2,500, full commission as already set out must be charged, but in the case of a transaction in which the consideration money exceeds £2,500, full commission must be charged up to that amount, but a broker may at his discretion (when in his opinion the volume of his principal's business justifies it) charge a reduced commission on the balance of the transaction, provided that in no case shall such reduced commission be less than one-half of the minimum scale laid down in Appendix 39. The provisions of Rule 196 (1) may not be applied to this rule.

(2) In the case of a transaction in not less than £20,000 stock of a security of, or guaranteed by, the British or Indian Government having a currency of not more than twelve years, a broker may at his discretion charge a reduced commission on the entire amount, provided that in no case shall such reduced commission be less than one-half of the minimum scale laid down in Appendix 39.



The provisions of Rule 196 (1) may not be applied to this rule.

By Rule 195 (1). A broker may at his discretion charge only one commission for buying and selling the same security for the same principal for the same account, or for the account immediately following, or for cash during the same account, or during the account immediately following. (2) The reduced commission allowed by Rule 197 may not be applied to bargains done under this rule; nor are the reduced scales allowed by Rule 197 (1) applicable when a broker charges commission under Rules 195, 196 (1), or under clauses (1), (2), and 4 of Rule 203.

These clauses provide that (1) on a transaction for a member of any Associated Stock Exchange in Great Britain and Northern Ireland and the Irish Free State or a stock broker whose name is included in the list of stock brokers in Great Britain and Northern Ireland in pursuance of Section 77 (3) of the Finance (1909-10) Act, 1910, and who does not carry on business within the London postal area, such broker not being excluded by the provisions of Rule 198, a broker may at his discretion charge commission at a rate not less than the scale laid down in Clause (4) of this Rule, and when orders for the same principal for sale and reinvestment for the same account are given simultaneously, commission at a rate of not less than the scale laid down in Clause (4) of this rule on both sale and purchase, or at a rate not less than one-half of the scale laid down in Appendix 39 (the minimum scale) on one transaction, and reduced commission of not less than one-quarter of that rate on the other. The higher rate must be charged on the side which yields the larger amount. (2) The commission laid down by this rule shall be the minimum commission to be charged on all business coming to the Stock Exchange from a member of any Associated Stock Exchange or country broker as defined in Clause (1) of this Rule, except that a broker may apply to that business the provisions of Rule 195 (*supra*). Such commission shall not be shared with anyone except a clerk in the broker's own exclusive employment. Such clerk shall not under any circumstances, either directly or indirectly, divide or share his proportion of such commission with or allow the same to such country broker.

(4) On transactions for brokers as defined in Clause 1 of this rule a broker may at his discretion charge a reduced commission

at the rate of not less than one-half of the rates laid down in Appendix 39, and further he may charge the following exceptional reduced rates, viz.—

(a) Registered stocks—

Price £50 or under	.	.	$\frac{1}{8}\%$	} on stock.
Over £50 to £100	.	.	$\frac{1}{8}\%$	
£100 to £150	.	.	$\frac{3}{16}\%$	
£150 to £200	.	.	$\frac{1}{4}\%$	

With  $\frac{1}{8}\%$  rise for every £50 in price.

(b) Shares of \$50 or \$100 denomination dealt in in the American market—

			s.	d.	
Price \$50 or under	.	.	3		} per share.
Over \$50 to \$100	.	.	4	$\frac{1}{2}$	
\$100 to \$150	.	.	6		
\$150 to \$200	.	.	9		
\$200	.	.	1	—	

The provisions of Rule 196 (1) may not be applied when the exceptional reduced rates allowed by this Rule are charged.

By Rule 192. The minimum scale of commission, except as provided in the foregoing Rule 203, is not compulsory in the case of underwriting or the placing of new issues. Nor shall it apply to continuation provided that a broker shall charge or allow in respect of continuation business a rate not more favourable to his principal than that actually paid or received by him in the market, or if the continuation is effected wholly or partially by the employment of his own resources a rate which shall be fair and reasonable having regard to the market conditions of the day.

The sharing commission or giving rebates to outside brokers is expressly forbidden by Rule 198, which provides that “a broker shall, subject to the provisions of Rules 88, 90, and 204 (4), charge commission at not less than the minimum scale as laid down in Appendix 39, without modification to any stock and share broker or dealer in Great Britain and Northern Ireland and the Irish Free State, whether carrying on business in the form of a limited company or otherwise, who advertises in the public press for Stock Exchange business, or issues circulars respecting such business to other than his own principals, or who is a member of any other institution within the London postal area, where dealings in stocks and shares are carried on, and no allowance or rebate in respect of such commission shall be made to such broker or dealer or any other person,



but such restriction shall not apply to a broker who remunerates a clerk in his own exclusive employment with a share of the commission charged to such outside broker or dealer."

By Rule 88 (1). A broker may not receive brokerage from more than one principal on a transaction carried through directly between two principals, and *each contract note shall state* that the bargain has been done between non-members.

(2) Subject to the provision of Rule 204 (4) brokerage shall be charged to the non-member who initiates the business. Rule 204 (4) reads as follows, " Subject to the provisions of Rule 90 a broker when transacting business between a country broker who is entitled to the privileges of Rule 203, and an outside broker or dealer, who is excluded by the provisions of Rule 198 (*supra*), must charge the full commission as laid down in Appendix 39 to the latter and none to the former." It should be noticed that for the purposes of administering the commission rules—(1) A broker when transacting business between a dealer and a member of the public shall be considered as acting as the agent of the non-member. (2) The remuneration of a broker when transacting business between a dealer and a country broker who is entitled to the privileges of Rule 203, must in no case be less than the minimum rate laid down in that rule. (3) A broker when transacting business between a dealer and an outside broker or dealer who is excluded by the provisions of Rule 198 (*supra*) must always charge the latter with the full commission as laid down in Appendix 39.

Commission may be shared with an agent on certain conditions. Thus by Rule 199 (1) a broker may share his commission with an agent provided that (except in the case where such agent is his remiser or clerk in his own employment) the share of the commission actually retained by him is not less than half of the minimum scale as laid down in Appendix 39 except as provided in clause 5 of this Rule, and in Rule 195 (*supra*). (2) A broker may not share his commission with an agent if the agent's share is divided with or allowed to his principal. (3) A broker may not share with an agent the commission charged on the agent's personal business ; neither may he share with an agent any of the commission under this Rule on business done for a principal for whom he deals under the provision of Rule 197, for by Rule 3 of Rule 197 the reduced scales allowed by this Rule are not applicable when a broker charges

commission under Rules 195, 196 (1) or Clauses (1), (2), and (4) of Rule 203, or when commission is shared with an agent under Rule 199.

By Rule 203 (3). A broker may not act as a principal or send an order to a member of an Associated Stock Exchange or country broker for the purpose of evading the minimum commission on such business, nor shall he adopt any other procedure for a like purpose. Any evasion will be treated as a breach not only of this Rule but of Rule 87, which forbids a broker making prices or otherwise carrying on the business of a dealer, or of a shunting business, or arbitrage business, except in so far as it is authorized by Rule 92. This rule provides that subject to annual authorization by the committee, a member, whether broker or dealer, may carry on arbitrage business outside Great Britain and Northern Ireland and the Irish Free State with a non-member, but a broker so authorized may not make prices or otherwise carry on the business of a dealer, and a dealer so authorized may not act as an agent by executing orders for such non-member. (Appendix, Form 32.)

Commission is adjusted in the following way under the provisions of Rule 197 (4). In the case of an order to invest or realize an amount of money in or from several securities, each bargain, the consideration for which does not exceed £2,500, must bear the full commission, but should an order in one stock if above £2,500 consideration be only partially executed, the commission may be adjusted on completion of the order.

The contract note or notes which a broker renders to a non-member includes the commission. Under the General Rules, Rule 88 (*supra*), it has already been stated that "each contract note shall state that the bargain has been done between non-members."

By Rule 193 it is provided that (1) a broker shall render to a non-member a contract note in respect of every bargain done for such non-member's account, stating the price at which the bargain has been done. Subject to the provisions of Rules 88 and 90 (which relate to bargains between non-members and simultaneous orders), such contract note shall contain a charge for commission at a rate not less than the scale in Appendix 39 or as modified by the provisions of Rules 192, 195, 196 (1), 197, or 203. (2) Subject to Rules 194, 203 (3), and 204, the Rules under the heading of "Commissions" do not lay down any restrictions as to dealings between



members. (3) Except for business done under Rule 199, a broker may render a net contract note provided commission in accordance with Clause 1 of this Rule (*supra*) is charged, and provided such contract note states that the commission is allowed for in the price.

A broker may not act as a principal for the purpose of evading these Rules or adopt any other procedure for a like purpose, nor may he commute his commission for a fixed payment or salary unless in each year he be specially authorized so to do by the committee. Nor may he divide profits or commission with a non-member except as authorized by Rules 199, 200, and 201.

A broker, rule 199 (4), who shares commission with an agent shall render a contract note naming the agent and stating that the commission charged is shared with such agent under the provisions of this Rule. Such contract must not be rendered net, and must show commission at not less than the scale laid down in Appendix 39.

By Rule 201 a broker may remunerate a clerk in his own exclusive employment with a share not exceeding one-half of the commission charged to the principal he introduces, whether such commission be at the minimum scale as laid down in Appendix 39, or as modified by the provisions of Rules 195, 196 (1), and 197, provided that such remuneration is not shared by the clerk with, or allowed to his principal. A broker may not share commission with a dealer or a clerk to a dealer (Rule 202), but he may employ for the purposes of his business a remisier resident outside Great Britain and Northern Ireland and the Irish Free State, whose name is registered with the committee in accordance with Appendix 40 and may remunerate such remisier with a share not exceeding one-half of the commission charged to the principal he introduces whether such commission be at the minimum scale as laid down in Appendix 39, or as modified by the provisions of Rules 195, 196 (1) and 197 (see Rule 200).

In *Bickley v. Browning, Todd & Co.* (30 T. L. R. 134), the half-commission man was held not to be entitled to commission in respect of orders given after the determination of the employment, but was held to be entitled to an account in reference to carry-over transactions in respect of orders given before the determination of the employment.

The business of a stockbroker's office is not altogether confined to buying and selling shares on behalf of a client and supplying

information. Frequently a client will deposit securities or allow his securities to remain with his broker for a time, and particularly in the case of bonds will depute to him the task of collecting coupons, etc. This is, of course, a matter of convenience, and a small charge for the collection is usually made. The broker, in making such a charge, may render himself liable for negligence, which he would hardly do if he undertook the business without fee or reward; but still it is generally the practice to require something for the trouble involved. The question of negligence has already been referred to incidentally in dealing with the execution of the order, and it may be permissible again to return to it.

(2) *To perform the business with which he has been entrusted in a skilful manner.*

Like every ordinary agent, a broker would be liable for negligence. Thus he has been held liable in making a contract for the sale of bank shares without complying with the requirements of Leeman's Act, by which his principal was damnified (*Neilson v. James* (1882), 9 Q. B. D., 546). One of the tests, no doubt, to be applied as to whether a broker had been negligent or not would be: Had he acted reasonably according to the custom of other brokers or not? For instance, he would be expected to use reasonable diligence in the execution of an order, but this would not amount to an undertaking to execute it, in any event, since there may not have been a market for the particular securities (*Fletcher v. Marshall* (1846), 15 M. & W., 775; but see *Fenwick v. Bush* (1871), 24 L. T., 274). Again, a broker would have no right to carry over a client's shares without authority (*Maxted v. Paine* (1869), L. R., 4 Ex., 81), and the client would be entitled to repudiate the transaction.

In all respects the broker must follow the ordinary course of business, for his implied mandate is not to go outside the usual course of business. Thus, if a stock is commonly sold for ready money the clients would not be bound by a sale upon credit even though the broker by giving credit may be acting with a view to benefit the client (*Wilshire & Sons* (1808), 1 Cam. 258; *Brown v. Boorman* (1842), 11 Cl. & Fen. 1; *Maxsted v. Morris* (1869), 21 L. T. N. S., 535).

As between the client and the broker the liability depends upon the contractual relationship. The duty of a broker on receiving an order is to use due diligence in carrying it out, and if he does



not do so he will be liable to the client, even if he executes an order according to the custom of the Stock Exchange, and he will be liable to the client if he disregards the provisions of an Act of Parliament. Thus in *Neilson v. James* (1882), 9 Q. B. D., 546, where a broker had been instructed to sell shares in a joint-stock bank for a shareholder, and he sold them to a jobber on the Exchange, and advised the plaintiff, the shareholder, but the bought and sold notes between the broker and the jobber omitted to state the name of the registered proprietor of the shares as required by 30 & 31 Vict. c. 29, s. 1, by reason of which the contract was void and the bank having stopped and a winding-up order having been made before the day on which the jobber was entitled to name the person willing to be the purchaser, the contract for sale was repudiated and the plaintiff remained holder of the shares, the defendant was held liable for the amount at which the shares were sold. "It was argued on behalf of the defendant," said Brett, L.J., "that the plaintiff could only recover nominal damages, because if the contract had been in due form the jobbers would not have been bound to have taken the shares, as the plaintiff could not on the account day, when the bank was being wound up, have given a valid transfer which the bank could have registered. But it seems to me that all the seller was required to do was to deliver shares on the account day, which, if the bank had remained solvent, would have entitled the purchaser to have had them transferred into his name, and that the seller does not undertake that the banking company shall be a going concern up to the account day. The plaintiff was therefore ready to do then all that he was bound to do, and if the jobber had accepted the shares on that day, they would have been bound to have paid the agreed price, and as the defendant failed to do that which would have compelled them to have taken the shares, the plaintiff lost such price by reason of such failure." The questions as to the broker's liability to indemnify the plaintiff in respect of calls, however, was left undecided. Whether the broker is liable for buying scrip which was not genuine was discussed in *Lambert v. Heath* (1846), 15 M. & W., 486, and the Court of Exchequer held that the question for the jury was not whether the scrip was genuine or not, but whether the plaintiff had got what he contracted to buy. A broker, however, would not be liable for not carrying out a contract if there were no market in the shares, *Fletcher v. Marshall*

(1846), 15 *M. & W.*, 775. A broker would be liable to a third party where he exceeded his authority. Thus in the *National Coffee Palace Company, ex parte Panmure*, 24 *Ch. D.*, 367, where a client had instructed his broker to apply for 50 shares in a company which he named, and the broker applied for shares in another company by mistake, and an allotment was made but repudiated by the client, the company having been wound up and the client's name removed from the list of contributories, the official liquidator sued the broker for damages for the misrepresentation by which the company had been damnified to the extent of £50, and recovered that sum, and was held entitled to recover it. In the course of his judgment Cotton L.J. said: "What is the loss here? The liquidator cannot claim for what he has lost, nor is it a question what the creditors have lost. They are only entitled to what is ascertained to be the assets of the company. But the question is what did the company lose? If the representation as to authority had been true the client would have been fixed as the owner of the 50 shares, and the company would have been entitled to receive £50 on allotment. If so, on the footing that the client would have become the owner of 50 shares the loss must be taken to be *prima facie* the value of the 50 shares. Then what has the company to account for on the other side? What probability was there that some other person would have taken the shares? According to the evidence, out of their nominal capital of 250,000 shares, only 7,250 had been allotted before this transaction, and only 4,255 were allotted afterwards. That being so, it appears very unlikely that they would have found any other person to take up those 50 shares. Therefore the company has lost a solvent shareholder of 50 shares with no opportunity of finding another, and that loss must be the measure of damages in this case." And so where a banker in good faith sent to a corporation a transfer of corporation stock which purported to be executed by the two registered holders of the stock, though the signature of one was forged, and requested the corporation to register the stock in the name of the banker and grant a fresh certificate to him, and he transferred the stock to third parties, and the forgery having been discovered, an action was brought against the corporation for rectification of the register and other relief, and judgment was recovered by one of the two registered holders, and the corporation



incurred a large liability, it was decided that the banker was bound to indemnify the corporation, the principle of law being that "where a person invested with a statutory or common law duty of a ministerial character is called upon to exercise that duty on the request, direction, or demand of another (it does not seem to me to matter which word you use), and without any default on his own part acts in a manner which is apparently legal, but is, in fact, illegal and a breach of the duty, and thereby incurs liability to third parties, there is implied by law a contract by the person making the request to keep indemnified the person having the duty against any liability which may result from such exercise of the supposed duty. And it makes no difference that the person making the request is not aware of the invalidity in his title to make the request, or could not with reasonable diligence have discovered it" (*Sheffield Corporation v. Barclay* (1905), A. C., 392, per Lord Davey).

If a broker who has custody of his clients' securities makes no charge in the matter, he is a gratuitous bailee, and is not liable for loss by robbery. But where the deposit is not a gratuitous one he may be liable under certain circumstances. Like any ordinary agent entrusted with the custody of securities for reward he would be liable for the want of ordinary care in safeguarding them.

The Stock Exchange rules regulate the taking of cheques in exchange for securities, although bank notes may be insisted on, but not in payment of differences (see Rule 104 Appendix). The rule of law on the subject is that an agent in possession of valuable securities must not part with them for a cheque. Where an auctioneer parted with a security for a cheque which was subsequently dishonoured he was made personally liable to make the loss good (*Pape v. Westacott* (1894), 1 Q. B., 272; see also *Blumberg v. Life Interests Corporation* (1897), 1 Ch. 171).

The client has the right to follow money or securities which have been handed to a broker for the purpose of investment and misappropriated by him, provided he can trace the money or securities. In the former case the broker as agent is in a fiduciary position, and the money is in effect trust money. In many cases the money may be actually trust money, as where trustees are investing in securities on behalf of their *cestuis que trustent*, but this makes no difference as to the right of the client to follow it, and claim either the actual money or securities bought with it in preference to the

other creditors (in *re Hallett's estate*, *Knatchbull v. Hallett* (1880), 13 *Ch. D.* 696). But differences are not trust money, and in respect of any in the hands of a broker in the event of his default the client can only share *pro rata* with the other creditors. If, however, the securities are bearer securities any hope of recovering them would be frustrated by their having passed into the hands of a holder for value without notice (*Taylor v. Plumer* (1815), 3 *M. & S.* 562).

In tracing money which has been misappropriated and paid into a bank the following rules apply: If the broker withdraws money he will not be considered as drawing the first paid in, but as withdrawing his own money before the trust money; but where the moneys of two clients are paid in, the rule in *Clayton's case* (1816), 1 *Mer.* 572, applies, i.e. the money withdrawn will be presumed to be that which is first paid in.

The rules of the Stock Exchange cease to apply where a transaction is concluded by the receipt of the money or the delivery of the securities to the broker. The broker then assumes a fiduciary position towards his client, and securities and money as stated elsewhere, when misappropriated by him, can be followed.

The law as to the responsibilities of partners is not strictly pertinent to this book, but it cannot be altogether neglected.

Thus, when a broker is a trustee, members of a firm should exercise caution in dealing with the trust property of which he is a trustee, otherwise they may render themselves liable to replace them when the trustee partner has misappropriated them. In *re Ribeyre v. Barclay* (1856), 23 *Beav.* 107, a trustee of a marriage settlement misappropriated certain Portuguese bonds. The firm had bought Brazilian bonds on account of the trust. The Court inferred from the course of dealing that the bonds were in the custody of the firm, and the partners were ordered to replace them.

A broker is not entitled to set off a debt due from the client to himself against moneys due to the client which are not due to the client in his individual capacity, where he has notice that the money is not that of the client's. Thus, where a solicitor had had speculative dealings with a broker resulting in a debt being due from the solicitor to the broker, the broker was held not entitled to set off this debt against moneys receivable by the solicitor on behalf of clients. Four executors, it seems, had given the solicitor



instructions to sell certain stock. The solicitor instructed the broker, who sold the stock and forwarded the deeds of transfer to the solicitor, who retained them, executed with receipts for the purchase-money indorsed and signed by the four executors. The broker credited the solicitor with part of the proceeds and forwarded a cheque for the balance to the executors. Since the broker was assumed to have had notice that the shares were not the solicitor's, yet although the solicitor had authority to receive the money, the broker could not discharge himself from his liability to pay otherwise than by paying the whole to the solicitor. Payment by giving credit was not sufficient, and the executors were entitled to the balance (*Pearson v. Scott* (1878), 9 Ch. D. 198).

Payment by set-off between brokers and jobbers is customary on the Stock Exchange, but such a custom would not bind a client. Thus a London broker selling shares for a country broker acting for an undisclosed principal is not entitled to set-off a debt due to him from the country broker, and a claim that he is entitled to do so by custom would be bad as against the undisclosed principal unless it could be established that he knew the custom and agreed to be bound by it (*Blackburn v. Mason* (1893), 9 T. L. R., 286; *Crossley v. Magniac* (1893), 1 Ch. 594). It is more than doubtful whether such a custom exists, its existence being expressly negatived in *Anderson v. Sutherland* (1897), 13 T. L. R., 163, where the jury found by their verdict that the alleged custom was no more than a practice amongst brokers.

The broker has a lien on securities in his hands belonging to his principal. The lien extends to all debts due on Stock Exchange transactions, and this lien is not affected in the case of negotiable instruments where a broker takes them in good faith without notice of the rights of third persons (*Jones v. Peppercorne* (1858), 1 John's, 430). Nor is it affected where securities are deposited for a specific advance which is paid off. Thus in the case of *In re London & Globe Finance Corporation* (1902), 2 Ch., 416, where documents relating to shares belonging to a customer were deposited with stock-brokers against a specific advance of £15,000, and the documents were left in the hands of the brokers, and subsequent dealings which took place resulted in losses to the customer for which the customer was held liable, it was held that the broker's lien extended to the securities. The lien, however, is one which cannot actively be

enforced, and is not of great value, since the broker has the right to sell securities and claim the difference.

Supposing that the broker wrongfully declines to deliver up securities belonging to his client when requested to do so, the client's remedy would be by action of detinue, which action is based upon a wrongful detention of the plaintiff's chattel by the defendant evidenced by a refusal to deliver it up on demand, the action not being one claiming redress for the money by way of damages, but demanding the return of the chattel or its value, i.e. the securities. Supposing, however, that the broker has unlawfully or negligently lost or parted with part of the securities, as he cannot get rid of his contractual liability to restore the client's property, the action will lie. The damages recoverable by the client in such a case are assessed on the basis of the selling value of the securities at the time the demand was made and the value at the time the shares were given up. Thus, in *Williams v. Peel River Land and Mineral Co., Ltd.* (1886), 55 L. T., N. S., 689, on a claim for the wrongful detention of stock which the plaintiffs had intended to sell, but were prevented from selling by the acts of the defendants, substantial damages, arising by reason of the fall in value, were recovered. But the damages must not be too remote, and they must flow naturally from the wrongful act of the defendant. Thus damages would not be recoverable where the loss prevented the payment by the client of deposits which would have entitled him to an allotment of new shares (*Williams v. Archer*, 1847, 5 C. B., 318). In *Michael v. Hart* (1901), 2 K. B. 867, the defendants, a firm of stockbrokers, in breach of a contract made with the plaintiff, who had instructed them to buy and sell shares on his behalf, sold certain shares which they had agreed to carry over, and closed their account with the plaintiff, and sought to realize certain shares which had been deposited with them by the plaintiff to realize the balance of the account alleged to be due from the plaintiff. The plaintiff sued for breach of contract, and claimed to have an account taken between them upon the footing of his being credited with the highest price which the stocks and shares could have realized at any time during the currency of the account. Mr. Justice Wills, in his judgment, said : " The only matter that I have to deal with in this case is the measure of damages. The plaintiff had entered into a contract with the defendants, whereby the defendants were to purchase



shares on his behalf. The defendants in pursuance of that contract had purchased various shares on the plaintiff's behalf, and the plaintiff was entitled to have those shares delivered to him on the settling day on payment of certain prices. The defendants further by their contract undertook that they would at any time before the settling day, if directed to do so by the plaintiff, sell the same shares for the plaintiff. Under those circumstances it seems to me that the plaintiff is entitled to all the advantages that would have been his if the contract had been carried over. Amongst these advantages was the right to sell the shares whenever he chose during the period over which the transactions were to run, and at different times different prices might have been realized. No doubt the plaintiff would, in fact, never have realized the best prices that ruled during that period. But I think I am right in saying that the Courts have never allowed the improbability of the plaintiff's obtaining the highest prices to be taken into consideration for the purpose of reducing the damages. The defendants are wrongdoers, and every presumption is to be made against them. In my opinion the plaintiff is entitled to the highest prices which were obtainable during the period during which he had the option of selling."

It would appear that the principle of this case would be applicable in assessing the damages occasioned by a wrongful detention of a client's securities by a broker. The wrongful misappropriation of securities is referred to elsewhere, such cases arising where the transferee took from the broker through the fraud of the broker.

### BROKER AND JOBBER

It has been previously pointed out that it is the broker who makes the contract on behalf of his principal, or client, with the jobber. Since both broker and jobber are members of the Stock Exchange, it will be found that the contract between them is very nearly entirely interpreted by the rules and regulations of the Domestic Forum. Therefore although the jobber can have resort in some circumstances, namely, on the default of the broker, to the client of the broker for whom the contract has been made, such cases are not of frequent occurrence. Where the broker is solvent, he looks to him to discharge all the obligations arising under the contract, and the broker is personally liable to the jobber.

All disputes between members not affecting the general interests of the Stock Exchange which arise out of Stock Exchange transactions, or are connected with Stock Exchange business, and including partnership disputes, must be referred to the arbitration of a member or members of the Stock Exchange ; and the Committee will not take into consideration such disputes unless arbitrators cannot be found or are unable to come to a decision. (2) The decision of the Committee as to whether a dispute affects the general interests, and if so, how it shall be dealt with, is final. Rule 75, Clauses 1 and 2. A member may not, without the consent of the Committee, attempt to enforce by law any clause arising out of such dispute, and the Committee have power to intervene in cases where the principal of a member shall attempt to enforce by law a claim against another member which is not in accordance with the rules, regulations, and usages of the Stock Exchange, and will deal with such cases as the circumstances may require. It has already been mentioned that the Stock Exchange refuses to recognize in its dealings any other parties than its own members, and every bargain, therefore, whether for account of the member effecting it or for account of a principal, must be fulfilled according to the rules, regulations, and usages of the Stock Exchange. An application which has for its object to annul any bargain in the Stock Exchange will not be entertained by the Committee except upon a specific allegation of fraud or wilful misrepresentation, or upon *prima facie* evidence of such material mistake as in their judgment renders the case one which is fitting for their adjudication.

If a non-member shall make any claim or complaint against a member the Committee, in the first place, will consider whether such claim or complaint is fitting for their adjudication, and in the event of their deciding in the affirmative, the non-member shall, previously to the case being heard, sign the form of Reference, No. 31 in the Appendix.

There are certain rules, compliance with which, the Stock Exchange insists upon.

It refuses to allow its members to advertise for business purposes or to issue circulars or business communications, to persons other than its own principals. All members, until otherwise ordered by the Committee, must state on all correspondence relating to the transaction of business on the Stock Exchange and contract notes,



(i) The name of their firm, if any ; (ii) the names of all the partners therein ; and (iii) where the name of the member or any partner of foreign birth has been changed since 4th of August, 1914, his original name, in brackets, after his new name. The Committee may refuse to allow a member or firm to carry on business under a name which they consider misleading. A broker issuing a contract note shall use such a form as will provide that the words " Member of the Stock Exchange, London," shall immediately follow the signature. A member may not transact speculative business directly or indirectly for or with an official or clerk in any public or private establishment without the written consent of his employer ; nor may a member do a private bargain with an individual member of a firm in the Stock Exchange, such bargain being wilfully concealed from the firm ; nor may a member or authorized clerk do a bargain with a clerk whether a member or not for account of such clerk ; nor may a member transact business for a principal who, to his knowledge, is in default to another member unless such principal shall have made a satisfactory arrangement with his creditors.

No member or authorized clerk may carry on business in the double capacity of broker and dealer ; nor may a broker make prices or otherwise carry on the business of a dealer, nor carry on shunting business, nor shall he carry on arbitrage business except as authorized under Rule 92.

A member is forbidden to deal in prospective dividends, nor may he do an option for a period beyond the seventh ensuing account day. This Rule 94 is qualified by Rule 183 (1), which declares that in the case of a failure claims arising from bargains or options for a period beyond the third ensuing account day, will not be allowed to rank against the defaulter's estate until all other claims have been paid in full, but assets arising from such transactions shall be collected and distributed amongst the creditors.

The contract between broker and jobber is subject to an implied condition : that unless it is strictly fulfilled according to the rules and regulations of the Stock Exchange, the party who is not in default has his remedy open at once. He has not to wait a reasonable time such as the law in some cases presumes in the case of an ordinary contract at law, but he can buy in or sell out as the circumstances of the case require, and claim the difference against the

defaulter. A series of rules provide for all eventualities, and these rules must be strictly followed where it is desired to claim such difference, which is, of course, in the nature of damages against the defaulter for breach of contract. The party who is seeking to recover a difference for a breach of contract is not allowed to buy or sell on his own account in the open market, but he has to resort to the officials of the Buying-in or Selling Department.

The same remedies that are open to the jobber are equally open to the broker.



## CHAPTER X

### CLIENT AND JOBBER

As a rule actions by a jobber against the client are extremely rare, because no member is allowed to have recourse to law to enforce a claim arising out of a Stock Exchange transaction against the principal of a defaulting member except with the consent of such member, or of the creditors of the defaulter, or of the Committee. Cases, therefore, in which a jobber has had recourse to a judicial tribunal are necessarily rare. Nevertheless, where the member has become a defaulter, the rules provide that the defaulter, if required, must disclose the name of his client whenever the client is indebted to him. On a case of default this, of course, would be in order to benefit the estate (Rule 48). Although the terms of the rule impliedly permit legal proceedings by the jobber where the principal is known, the Committee would no doubt be loth to sanction them. Moreover, they have power to stop them by expelling the disobedient member. In practice the Committee never give their consent where the sole result of the action would be for the jobber's benefit. The existence of the client, but not the name, is well known to the jobber when he makes the contract. He is, however, relieved from the necessity of inquiring into his financial position, for, although in law he is the principal, the jobber looks only to the broker both for payment and for the delivery of the securities which have been bought or sold by the broker. Although a matter now of purely academic interest, there was a time when it was believed that, where a jobber had dealt with a broker and believed him to be the principal when the real principal had paid the broker at the time when the jobber still gave credit to the broker, the principal was no longer under any liability. The law, however, is clear on the point that a principal or client would not now be discharged as against the jobber by a payment to his own broker, unless such payment should be held to be made in the usual course of business on the Stock Exchange. Presumably if the jobber had pursued his remedy against the broker, as he would be entitled to do under the Stock Exchange rules, with knowledge of the name of the client, the client could say that he had elected to treat the broker as principal and could no longer sue him.

Whilst the policy of the Committee of the Stock Exchange is directed to prevent actions by jobbers against principals, they

possess no power to prevent non-members bringing actions against members ; and where the name of the jobber is known and a cause of action lies by reason of his conduct, the principal can sue him, though with probably little likelihood of success. The Committee, however, offer the non-member an alternative remedy ; as they are willing to adjudicate upon the merits of a dispute between a member and non-member. On a complaint being lodged against a member they first consider whether the complaint is fitting for their adjudication, and, if they decide that it is, the non-member is requested to sign a consent in writing for the case to be heard by the Committee. The Form of Consent runs as follows—

*“ To the Committee for General Purposes of The Stock Exchange,  
London ;*

*“ In the Matter of a Complaint between  
and*

*“ GENTLEMEN,—*

*“ I do hereby consent to refer this matter to you, and I undertake to be bound by the said reference, and to abide by and forthwith to carry into effect your Award, Resolution, or decision in this matter, in the same manner as if I were a Member of The Stock Exchange ; and I further undertake not to institute, prosecute, or cause, or procure to be instituted, or prosecuted, or take any part in proceedings, either civil or criminal, in respect of the case submitted. And I consent that the Committee may proceed in accordance with their ordinary rules of procedure, and I undertake to be bound by the same. Also that the Committee may proceed *ex parte* after notice, and that it shall be no objection that the Members of the Committee present vary during the inquiry, or that any of them may not have heard the whole of the evidence, and any Award or Resolution of the Committee, signed by the Chairman for the time being, shall be conclusive that the same was duly made or passed, and that the reference was conducted in accordance with the practice of the Committee. And I hereby agree that this letter shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act, 1889.*

*Agreement  
Stamp.*



The jobber, however, is not always able to be sued even where his name is known, because his liability is discharged according to Stock Exchange custom by supplying the name of a buyer or deliverer of securities in accordance with the rules (*Grisell v. Bristowe*, L. R., 4 C. P. 36; *Coles v. Bristowe*, L. R. 4 Ch. 3). The question of the jobber's discharge under the rules is fully discussed elsewhere.

If the jobber is not discharged, the broker or the client, as the case may be, must enforce his rights promptly: the broker because he must comply with the Stock Exchange rules, which prescribe the method of enforcing the rights, and the client because buying according to the custom of the market he must follow the rules of the market, and rights not enforced immediately are treated as waived, intermediaries being released.

A jobber does not guarantee that the name of a purchaser supplied by him will be registered in lieu of the vendor as the holder of shares transferable by deed of delivery. If the client requires any such guarantee he must instruct his broker, who will make a special contract with the jobber at an increased rate by reason of the increased risk undertaken. The jobber is not then discharged until the purchaser's name is registered (*Cruse v. Pain*, (1869), L. R., 4 Ch. 441).

It has been stated already that in actions against members the Committee have power to intervene in cases where the principal of a member attempts to enforce by law a claim which is not in accordance with the rules, regulations, and usages of the Stock Exchange, and they will deal with such cases as the circumstances may require. In one instance they made a broker whose client had unsuccessfully sued a jobber pay the balance between the jobber's taxed costs and the costs due as between solicitor and client.

#### DETERMINATION OF THE CONTRACT

It is now necessary to consider the question of the determination of the contract. This can happen (I) by the performance of, or breach of, the contract by the client, or by his death, bankruptcy, or insolvency; (II) by the performance of, or default or breach of, contract by the broker, or by his death; (III) by the performance of the contract by, or death, or default of, the jobber; (IV) by fraud on the part of any party to the contract. In the first case the

matter is determined by law, but in the latter cases, as between broker and jobber, by the rules and regulations of the Stock Exchange.

### I. (1) *Performance by Client.*

The performance of the contract by the payment of the purchase-price of the shares bought, or by delivery of the securities, may not be an absolute performance of the contract, for liabilities may subsequently arise which are referable to the contract which require to be discharged before the contract can be said to be completely performed. These liabilities are liabilities for calls on unpaid shares, where the transferee's name is not in the register, or the securities are not able to be delivered. In such cases, although both broker and jobber are released from liability, it may happen that principals or vendors and purchasers have rights accruing. In general, however, the delivery of the securities and payment of the price completes the contract.

### (2) *Death of the Client.*

In law the death of a principal acts as a revocation of the authority, and it will therefore be found that a broker as agent for a principal on the death of his client can no longer continue or carry-over his stocks or shares.

Where he has with his own money purchased securities for a principal, he is justified in re-selling them directly on the death of his client. This was illustrated in the case of *Lacey v. Hill, Scrimgeour's claim* (L. R. 8 Ch. 921), where Sir G. Mellish said in reference to a claim by stockbrokers against the estate of their client where the stockbrokers had purchased the shares with their own money, and had sold claiming against the estate of the deceased, "I think whether we look at the claim strictly according to the rules of the Stock Exchange or look at it according to law, in either view the claim is good. If we strictly apply the rules of the Stock Exchange, as explained in the judgment of Mr. Justice Blackburn in *Duncan v. Hill* (L. R., 8 Ex. 242, 246), and for a moment leave out of sight the fact that the stock had been actually paid for and delivered, and assume that the state of things was exactly the same as if the whole remained in contract, yet even then, in my opinion, the rules of the Stock Exchange are very reasonable and would apply. Those rules are, that when a broker making a contract in his own name has made for his principal a contract by way of speculation



whether certain stocks will during the next fortnight rise or fall, and the principal dies or becomes bankrupt, or falls into such a state of insolvency that it is manifest the brokers cannot depend on him to protect them against any loss that may occur, then the brokers may at once terminate the transaction, so as to make the profit or loss, whichever it is, depend upon the state of things on that day, and not to run the risk of any further fall in the Market. That appears to me a most reasonable rule." The Stock Exchange custom which Sir George Mellish referred to in this passage of his judgment was given in evidence at the trial, and was as follows : " That with very few exceptions all bargains and transactions on the Stock Exchange are made for certain periodical days called 'settling days.' That when a broker, on the instructions of his principal, agrees to buy, or actually buys, a certain amount of stock or shares, the stock or shares so bought are in no wise identified as the stock or shares so ordered to be purchased, but remain by the practice of the Stock Exchange the property of the brokers and at their disposition, not at that of the principal. When the transaction as between the brokers and the principal is completed by payment by the principal by delivery of the stock, the particular stock becomes the principal's property, and is treated and considered as the subject of the bargains; and the brokers, according to the practice, are thereupon bound to hold the particular stock or shares at the disposal of the principal. That when it becomes notorious that a principal is, by reason of bankruptcy or death, unable to receive and pay for, or to deliver, the stocks or shares which he has ordered to be purchased or sold, and that no one is authorized to deal with the account, or able and willing to take the responsibility thereof, then and in such case it is usual for the broker, who is responsible to the members of the Stock Exchange for the transactions entered into for his principal, to proceed at the earliest practicable period to close the account of such principal by selling on the best terms amounts of all stocks or shares equivalent to those he may have contracted to take, and by purchasing amounts of all stocks or shares equivalent to those he may have contracted to deliver." See also *Ellis v. Pond* (1898), 1 Q. B., 426. In *Lacey v. Hill* (1874), L. R., 18 Eq., 182, at p. 190, Jessel, M.R., said : " By the rules and usages of the Stock Exchange, if the principal dies or becomes insolvent during the currency of the account, the broker has a right to sell

immediately.” Notwithstanding the dicta of these eminent judges in the above-cited cases, it is not clear whether brokers have a right to close a client’s account open in the market on the ground of insolvency. For, in *Lacey v. Hill, Scrimgeour’s case* (*supra*, p. 195), the brokers had probably borrowed the money from their bankers, and were takers in of the stock, and Lord Justice James decided the case altogether apart from the above-quoted custom, and both judges were of opinion that if the stocks had risen after the sale, the brokers would have been liable to make good the loss incurred. There is no doubt, however, as to the right of a broker to close the account at the end of the settlement, on the death of a client, for he has no power to carry it over (*Phillip v. Jones*, 4 *Times*, L. R., 401). In *re Overweg, Haas v. Durant* (1900), 1 *Ch.* 209, a stockbroker had a continuation account with a client. The client died on the 24th March, 1898, and the next day the brokers were informed of the fact. After endeavouring but failing to obtain instructions from the client’s representative, on the 28th March they carried-over the account to the 29th April. The brokers, learning that a meeting of their deceased’s client’s creditors had been called on the ground of the estate being insufficient to meet liabilities, sold the stocks and shares, which were part of his account, but not Canadian bonds, which were unable to be sold for want of a purchaser till April 29th. There being a debt due to the brokers they claimed against the estate. Byrne, J., in a considered judgment, said: “The broker could have closed the account on March 28th by selling in the market, relying upon his right to indemnity against the estate of his principal in respect of any loss, but he preferred to sell in a different way. I have not to consider the question whether or not the legal personal representative could have elected to adopt the continuations actually effected, and the ultimate sale at a later date had it been his interest to do so, inasmuch as he elects to stand by the contract for sale entered into on March 28th, 1898.”

### (3) *Bankruptcy or Insolvency of the Client.*

It is no doubt clear that a broker is entitled to close his client’s account if a balance of differences in the broker’s favour has not been paid him by his principal upon the pay-day of the current settlement, provided that the broker has given his principal notice of the amount of the balance due before the pay-day, and the broker has not been provided with funds or available collateral security



sufficient to cover the amount of the balance, even though the client has instructed the broker to carry-over the stock to the next settlement (*Davis & Co. v. Howard*, (1890), 24 Q. B. D., 691). Evidence of Stock Exchange usage was given, and commenting on that Mr. Justice Charles said: "It is said that the usage thus proved is unreasonable. Now, at first sight, no doubt it appears unreasonable that it should be within the province of a stockbroker to close all the transactions of his principal because two days after the broker has made contracts on his principal's behalf on the Stock Exchange the principal fails to supply the broker with, it may be, a very small balance due on the previous account; but on closer examination, and having regard to the peculiar nature of the business which a stockbroker does for his principal, I can see nothing unreasonable in this usage. It is admittedly reasonable where the principal is insolvent, or, if not insolvent, is in circumstances which give good reason for thinking that it may be difficult for him to meet his engagements. Its root and foundation is the peculiar position of the broker who has to pay all his principal's differences out of his own pocket before 3 o'clock on pay-day, and who, if he does not do this by 11 o'clock on the following morning, is liable to be declared a defaulter on the Stock Exchange. In such circumstances it is, in my opinion, very reasonable that the broker should have this right to protect himself. It was argued that the broker ought not to be allowed to close the account unless he were in a position to prove either in a domestic tribunal or in a court of justice, if the matter should come before a court of justice, the actual or virtual insolvency of his principal at the time when the account was closed. I think this would throw upon the broker an intolerable burden, and that the fact of the money of the principal not being forthcoming in time is, and ought to be, sufficient to entitle the broker to protect himself by taking the course which the plaintiffs have taken here. I also think that to decide otherwise would not be in accordance with existing authority." See also *Druce v. Levy* (1891), 7 T. L. R. 259, and *Forget v. Baxter* (1900), A. C., 467, P. C. The broker, however, may, if he chooses, close a part of the client's account and keep open the remainder, the decision to the contrary effect in *Samuel v. Rowe* (1892), 8 T. L. R., 488, was overruled by *Hilton and others v. Morton* (*Financial Times*, 3rd July, 1908). It was held in *Cullum v. Hodges* (1901), 18 T. L. R., 6, C. A., that where

a broker had informed his client that he would be unable to carry-over his transactions, and the client replied stating that he could not find the money, the broker was justified in closing some of the transactions and leaving others open in his discretion as he was able to.

Another question which arises after a sale by a broker of his client's securities has been the subject of judicial decision, and that is whether the broker has a right to re-purchase such securities at the same price on his own account as part of the same transaction. The first case on the point was *Waller v. King* (1897), 13 *T. L. R.*, 270, *C. A.* There the brokers had bought and paid for a large number of shares, and on the defendant failing at the proper time to find the purchase-money, the brokers went to a jobber and had a fair price fixed for them, and went through the form of selling and buying back the shares. It was contended that the brokers had no right to buy back the shares, and that their only proper course was to sell the shares in the market and claim the difference between the bought and sold price. The Court of Appeal, however, approved of the course adopted by the brokers, the price being reasonable, and there apparently being an impossibility of selling the shares. In *Macoun v. Erskine* (1901), 2 *K. B.*, 493, in consequence of the plaintiff not supplying the defendants, who were brokers, with funds, the defendants were in a position to close the accounts. They did so by getting a jobber to make a price in the shares, and a sale took place with a re-purchase by the brokers for the next account. It was contended by the plaintiff that the sale to the jobbers was a mere form, and that the defendants were acting in a fiduciary capacity, and were not entitled to re-purchase the shares on their own account. The transaction was upheld. In the course of his judgment Lord Justice Vaughan Williams said (page 502): "Though I have as a lawyer expressed an opinion that it would be better that a broker closing a customer's account should do so by a clean sale with no concomitant bargain with the jobber on his own account, yet if the general practice of the Stock Exchange were to the contrary, I should not say that my judgment was likely to be better than that of practical men engaged in these transactions, whose interest it is that their system should accord with the interests of their customers as well as their own interests. But I do not understand from the evidence in this case that the



practice of closing accounts in the manner in which the account was closed in the present case is general on the Stock Exchange." In *Erskine, Oxenford & Co. v. Sachs and Another* (1901), 2 K. B. 504, the brokers, in default of their client providing the money for the purpose of closing the account, went into the market and sold a like amount of shares to a jobber, and as part of the same transaction re-purchased the shares from him on their own account. By reason of the sale and re-purchase being effected in one transaction the brokers were enabled to re-purchase the shares at a price which was lower than they would otherwise have had to pay. They also charged their client commission on the sale of the shares to the jobbers. It was decided that the brokers having acted in a fiduciary capacity in the sale of the shares, and having, by reason of that sale and the re-purchase being effected as one transaction, obtained a profit for themselves, they were bound to account for that profit to their principals, the clients.

It may be observed that the result of these cases seems to be that the broker may buy back shares that he has sold provided that he does so at an honest price, and as an independent transaction. Yet if the selling for his client and the buying back for himself are by one and the same transaction, and he thereby makes a profit, he must account for that profit to his client, and is also entitled to claim commission. In such a case the client can elect either to repudiate the contract or to adopt the contract and claim the profit. Though the broker has the right to close the account of a client in default, he must not do so wrongfully. If he does so he loses his right to indemnity. Thus, in *Ellis v. Pond* (1898), 1 Q. B. 426, a broker bought stock for a client, some of which he paid for and some of which he kept open with an agreement not to sell before a particular date. Before the date agreed upon he sold the whole at a loss, though the client was not in default, but because the market was falling. Before the agreed date the stocks rose, although the transaction still showed a loss on the original contract price. Some of the stock had been paid for by the broker, but some of it was open on the market. In respect of the stock paid for by the broker he was held entitled to recover what he had paid for it subject to a counterclaim by the client for damage for selling before the agreed time, but he was held not entitled to an indemnity in respect of the shares which had been open in the market, since by his own

wrongful sale he had created the differences for which he was suing his client. See also *Murray v. Hewitt* (1886), 2 T. L. R. 872. Where stock is bought for a client and is open in the market the contract is that if the broker will purchase stock for him, the principal will upon the settling day take up and pay for the stock so purchased by the broker, and that if he does not the principal will indemnify the broker from the claim of the jobber. Therefore, if the broker wrongfully sells before his time he cannot claim indemnity. See also *Bowlby v. Bell* (1846), 3 C. B., 284. In *Michael v. Hart & Co.* (1902), 1 K. B., 488, brokers closed a client's account before the settling day without instructions, the jury finding against the brokers on their contention that an agreement to carry-over had not been unconditional. The stocks were falling when the plaintiff's account was closed. They rose again shortly afterwards, and were higher at the end of the settlement, having been still higher in the interval. At the trial the judge held that the damages ought to be assessed at the highest prices which the stocks had touched between the closing account and the end of the May settlement. On appeal, Collins, M.R., said : " It is argued on behalf of the defendants, in the first place, that the closing of the plaintiff's account by the defendants was a final breach of the defendants' contract with the plaintiff. It is said that, inasmuch as that closing of the account was effected by releasing the jobbers with whom the defendants had carried over the stocks from their contracts, that for some reason or other affected the right of the client in such wise that he was bound to treat that repudiation of their contract by the defendants as a final breach, and the only breach of which he could take advantage ; in other words, it is said that there was a breach of such a nature, having regard to the relations between stockbroker and client, that there was no option on the part of the plaintiff afterwards to insist on the contract, and wait till the date fixed for performance, and then measure his damages with reference to that date, but he was bound to treat the contract as rescinded upon the closing of his account, and measure his damages with reference to the date at which it was closed. I cannot assent to this argument."

The point as to whether the damages were to be assessed at the price of the stocks reached at the settlement or at the highest point they reached between the day of sale and the day of settlement was



left open. With reference to a defaulting client, a member is forbidden to deal with such a person when he is aware that he is in default with his broker until he has made a satisfactory arrangement with his creditors.

II. *The performance of the contract by the broker* releases him from further liability, but the delivery of forged securities, since it would not be a sufficient performance of the seller's contract to deliver, would not release the broker who acted for the seller. In *Westropp v. Solomon* (1849), 8 C. B. 345, bonds had been delivered by the seller which were forged, but the fact of the forgery was unknown to the seller. The Committee of the Stock Exchange, learning that there were a number of these forged bonds which were being dealt in, passed a resolution subsequent to the date of the contract compelling all brokers who had sold them to pay the purchasers a price which was considerably higher than that at which the defendant Solomon had sold. The broker Westropp paid, and claimed to be indemnified. He, however, failed, since the resolution passed subsequently to the date of the contract could not affect a transaction carried out before, and at the most the principal was only bound to repay the amount that he had received by means of the sale. The responsibility for the genuineness of bearer securities not only extends to the delivering broker, but in the event of his death, failure, or retirement, attaches to each member in succession through whose hands the ticket for the securities may have passed, and a somewhat similar rule attaches to the broker delivering registered securities. This case which seems to conflict with other decisions is distinguishable on the ground that no rule of the Stock Exchange making the seller in effect warrant the genuineness of the documents was before the Court. In view of Rules 120 and 134 it is doubtful if this decision would now be followed.

On the death of the broker his clerks may, by permission of the Committee, enter the house to adjust unsettled accounts. (Rule 71.)

The default of the broker arising from bankruptcy or insolvency by the Stock Exchange rules causes the assets of the defaulter to pass to the official assignee. The client's position, however, is also affected by what has been termed this domestic bankruptcy. The position is fully discussed later on.

III. *The death, insolvency or default of the jobber* entails somewhat similar consequences to those that occur on the death,

insolvency, or default of the broker. The distinction, however, must be observed that the broker is an agent, and that the jobber is a principal, being the principal on whose behalf the broker made the contract for the client.

Apart from the non-payment of the differences arising on the sale of stocks and shares, a breach of a special contract might arise as where the client agrees to provide cover for the broker in respect of dealings on the Exchange and fails to do so. Unless expressly stipulated that the failure to provide cover at a definite day is to operate as an instruction to close open bargains at once, it would be unwise on the part of the broker to close an account for a failure to provide cover on a definite day. It certainly would be prudent to wait till the end of the account, when the client could be compelled to elect as to whether he would find the cover, for the broker could not be compelled to carry-over and would then be justified in closing the account.

IV. *Fraud*. The fact that one of the parties to the contract has been induced to enter into it by fraud or a misrepresentation, which may be innocently made, will entitle the party to a rescission of the contract provided that it is repudiated within a reasonable time. A contract, however, is voidable, and not void on these grounds, for the party who is aggrieved can elect to be bound by its terms, and if it is not repudiated within a reasonable time, especially where the interests of innocent parties become involved, the contract will stand, the party aggrieved being left to his common law rights, namely, to an action for deceit.

In *Loring v. Davis* (1886), 32 Ch. D, 625, the plaintiff had sold on the Stock Exchange through her brokers thirty shares in the Oriental Bank Corporation to jobbers for £193 17s. 6d. The defendant Davis had instructed his brokers, Scrutton & Son, to purchase shares in this Corporation, which Scrutton & Son had accordingly done, sending a bought note to the defendant, who accepted and retained it. The bank stopping payment, the defendant formally repudiated the contract, through his solicitors, on the ground that it was in contravention of Leeman's Act, requesting his brokers not to give his name to the selling broker or jobber, or to act under the contract. At the same time the defendant informed his brokers, and told them, whatever position he might have to assume, that he considered himself bound to support them. The brokers sent in the



defendant's name on the buyer's ticket as the purchaser of ten shares, and shortly afterwards a transfer to Davis as transferee of the ten shares described by their numbers was sent with the share certificates and the buyer's ticket. In return for the transfer the defendant's brokers gave the plaintiff's brokers a cheque for the price of the ten shares, and forwarded the transfer to Davis for his execution, but Davis refused to execute it on the ground that it contravened Leeman's Act, and returned the transfer unexecuted to his brokers, in whose possession it remained. The defendant Davis paid his brokers, but no intimation that the defendant had repudiated the bargain was sent to the plaintiff till seven days at the earliest after the payment by the defendant to his brokers. The Court decided that, although Davis had not executed the transfer, he was liable: for he had not definitely repudiated the authority given to his brokers. As to a repudiation of a contract on the ground of fraudulent misrepresentation where the rights of innocent parties had intervened, see *Tennant v. The City of Glasgow Bank and Liquidators* (1879), 4 App. Cas. 615.

#### BREACH OF THE CONTRACT ARISING FROM DEFAULT, ETC.

A member who is unable to fulfil his engagements on the Stock Exchange may be publicly declared a defaulter by direction of the Chairman, Deputy Chairman, or any two members of the Committee, and he thereby ceases to be a member. This public declaration of default is known as hammering, and takes place in the Stock Exchange. Two of the waiters, when the announcement has to be made, stand in their boxes and strike three blows with a wooden mallet to arrest attention, and then standing up take off their hats and announce: "Gentlemen,—X and Y, trading as B and Company, beg to inform the House that they cannot comply with their bargains"; or "Gentlemen,—X and Y, trading as B and Company, have not complied with their bargains."

The effect of the declaration is that the member ceases thereupon to be a member of the Stock Exchange, and by Rule 172 he must further execute and deliver to the Official Assignee the form in Appendix 37. A like result, however, occurs when a member becomes bankrupt or is proved to be insolvent, or when a Receiving Order is made against him, or when he fails to pay the fees due to the trustees and managers, although he may not at the time be

a defaulter on the Stock Exchange, on a resolution of the Committee to that effect. A request for a declaration must be handed to the Secretary not later than a quarter to three o'clock or half-past twelve on Saturday, and the declaration must be forthwith announced to the Stock Exchange, but a declaration shall not be announced before a quarter to eleven o'clock. When a member gives private intimation to his creditors of his inability to fulfil his engagements, his creditors are not allowed to make any compromise with the defaulter, but must immediately communicate with the Chairman, Deputy-Chairman, or two members of the Committee, so that the member in default may be immediately declared. In case the Committee obtain knowledge of any private failure, the rule requires that the name of the defaulter must be publicly declared. Whilst this liability awaits a member who makes or attempts to make a compromise privately with his creditors, a liability to refund any money or securities received from such defaulter also attaches to a member conniving at a private failure by accepting less than the full amount of his debt, provided that such defaulter is declared within two years from the time of such compromise. In such a case the property so refunded is applied to liquidate the claims of subsequent creditors. Any arrangement for settlement of claims in lieu of a *bona fide* payment on the day when such claims become due is considered as a compromise, subject, of course, to the defaulter being declared within two years from the time of such arrangement. The Committee may order a member who fails to meet an obligation to a member or non-member, arising out of a Stock Exchange transaction, to be declared a defaulter.

The estate having been vested by deed of arrangement in the hands of the Official Assignee he proceeds to perform his duty. That is, to obtain from a defaulter his original books of account and a statement of the sums owing to and by him, to attend meetings of creditors and to summon the defaulter before such meetings ; to enter into a short examination of every account ; to investigate and report to the Committee forthwith any bargains made at unfair prices and to manage the estate in conformity with the rules, regulations, and usages of the Stock Exchange. In the event of a default the Regulations in Appendix 36 apply, i.e. that as soon after this declaration as possible all members having accounts



open with the defaulter should furnish the Official Assignee with two statements showing respectively (a) a copy of the Jobber's Ledger for the current account ; (b) all bargains which have been closed at " Hammer Prices." If there are any bargains for future date these must be set out on separate sheets for each account ; (c) in the case of a ticket issued by a defaulter for securities which have not been paid for, a contra entry should be made and the original bargain closed at the " Hammer Price." This is the price or prices which the Official Assignee is required to publicly fix before the declaration of default is made, being the prices which are current in the market immediately before the declaration, at which prices all members having accounts open with the defaulter must close their transactions by buying of or selling to him such securities as he may have contracted to take or deliver, the differences arising from the defaulter's transactions being paid to or claimed from the Official Assignee. Unexpired options must be similarly closed at a market valuation. In the event of dispute as to the prices or valuations they must be fixed by two members of the Committee. Any objection must be lodged with the Official Assignee in writing within two business days of the time when the list was posted in the Stock Exchange.

Differences due to or from a defaulter on the current account are to be set off against those due from or to the Official Assignee on the account closed at the Hammer. Such set-off is not to be made until the differences are payable. A creditor for " Hammer Price " difference, who has paid a difference on a current account, is entitled to the return of such difference, if this claim is equal to or greater than the amount paid and ranks upon the estate for the balance. If less he is entitled to the return of the amount claimed. (Appendix 36, Clause 2.)

A member, who shall have received a difference on an account before the regular day for settling the same, or who shall have received a consideration for any prospective advantage, whether by a direct payment of money or by the purchase or sale of securities at a price either above or below the market price at the time the bargain was contracted or by any other means before the day for settling the transaction for which the consideration was received, shall in case of the failure of the member from whom he received such difference or consideration refund the same for the general benefit of

the creditors, and any member who shall have under the circumstances above stated paid or given such difference or consideration shall again pay the same to the creditors, so that in each case all persons may stand in the same situation with respect to the creditors as if no such prior settlement or other arrangement had taken place.

These and some subsequent rules, which will be found hereafter discussed, deal with the liabilities of creditors and rights of creditors in the *cessio bonorum*, which takes place on the default of a member of the Stock Exchange. It may now be convenient to explain the nature of this *cessio bonorum*. On the default of a member, officials, called the Official Assignees, collect and pay the assets of the defaulter to the credit of their joint account at a banker's, and distribute them as soon as possible. These Official Assignees, two or more in number, are annually appointed by the Committee to act as Official Assignees, and their duty is defined as comprising the obtaining from a defaulter of his original books of account and a statement of the sums owing to and by him, the attending of meetings of creditors, the summoning of the defaulter before meetings, the entering into a strict examination of every account, the investigation of any bargains suspected to have been effected at unfair prices, and the management of the estate in conformity with the regulations and usages of the Stock Exchange. They are required to give security amounting to £1,000 from two or more members of the Stock Exchange, and the sureties are required, in the event of any default or misappropriation by an Assignee of funds or property entrusted to his care, or in the case of any other act of dishonesty on his part, to pay under direction of the Committee such sum as they may have guaranteed. These rules effect an assignment of the debtor's property in the Stock Exchange, but there is nothing to prevent the assignment being declared void by reason either of one of the creditors or the defaulter taking proceedings in bankruptcy.

The *cessio bonorum* does not operate as an accord and satisfaction of a creditor's debt, and after the assets have been distributed by the Official Assignee there is nothing to prevent a creditor suing for the balance of a debt due from the defaulter to him. A Stock Exchange creditor must obtain, however, when desirous of enforcing his claim by law, the consent of the creditors of the defaulter or of the Committee.



Thus in *Mendelssohn v. Ratcliff and Another* (1904), A.C., 456, where a consent had been obtained to further proceedings, the facts were that the appellant, who was a broker on the Stock Exchange, owed on May 15th, the pay-day of the mid-May settlement of 1901, £986 for differences in the purchase and sale of stocks. On the next day, having been declared a defaulter in the Stock Exchange, he handed his books and assets to the Official Assignee, who dealt with the estate. The respondents completed with the appellant's principals all such transactions as were open, and received from them the sum of £281. This sum they handed over to the Official Assignee; subsequently they brought an action and recovered a judgment for the two sums of £986 and £281 less a dividend which they had recovered from the Official Assignee of the Stock Exchange. A Receiving Order in Bankruptcy was subsequently made against the broker.

The appellant contended that the Stock Exchange proceedings in liquidation amounted to either an accord and satisfaction of the respondent's claim, or an agreement not to sue, or at the very least to a suspension of the creditor's rights at law. This contention the House of Lords declined to accede to. The rules bearing on the subject did not constitute an agreement not to sue; the second of the two sums was a sum payable by the defendant to the plaintiff under a special contract based upon the rules of the Stock Exchange.

As previously pointed out, a Stock Exchange creditor cannot attempt to enforce by law a claim arising out of a Stock Exchange transaction against a defaulter or against the principal of a defaulter, without the consent of the creditors of the defaulter, or of the Committee, but this rule in no way binds outside creditors who are entitled to enforce their rights in the usual way. It will be necessary hereafter to consider cases where the Official Receiver has come into conflict with the Official Assignee, through proceedings at law being taken by outside creditors. The amount of the assets and differences which the Official Assignee receives from the defaulter's debtors or from members of the Stock Exchange is collected and paid by him into such bank and in such names as the Committee may from time to time direct, and this must be distributed as soon as possible.

When a closing takes place before carrying-over day the closing

is for the then account, but if on or after the carrying over day, for the next account. When the bargain is in shares of a new company for which no settling day is fixed, the differences, whether they be credit or debit, will be recoverable and payable when the Special Settlement takes place.

The operation of the closing rule works as follows: A has a bargain open with the defaulter. A has sold, say, 100 shares at £1 5s., and B has sold 150 shares at £2 10s. to the defaulter before the default. The hammer price is £1 and £2 respectively. A buys back the 100 shares at £1 and B the 150 at £2. In each case A and B receive less than the price of their bargain, but they are entitled to prove for a dividend against the defaulter's estate. Supposing, however, that A and B have sold the shares at the same price as in the former instance, but that the hammer price is £1 15s. and £2 15s. respectively, then A and B, instead of being creditors, are debtors to the Official Assignee in the amount of the difference between the sale price and the hammer price, and this difference they have to pay in full. The first sale having proved inoperative, the loss to A and B is the difference between the price of the original sale and the hammer price, less the dividends that may be received from the estate. The actual loss, however, is not limited to this, for there may be a further loss on re-selling the shares on the market at a price below the hammer price, which, of course, the broker cannot claim against the estate. On the other hand, he may complete his sale at a higher price than the one fixed by the Official Assignee, which would then lessen his loss on the default.

The above instances refer to sales in the market, but a converse case where A and B are buyers would in each case result in A and B closing their bargain at the hammer price and proving where a loss accrued against the defaulter's estate.

The differences that have been referred to are not assets of the defaulter. They are collected from members of the Stock Exchange. In *re Plumbly, ex parte Grant* (L. R., 13 C. D., 667, 673) the nature of these differences is explained. "When a member is unable to meet his engagements, he gives notice to that effect to the Secretary of the Committee, and, the previous authority of the Chairman or the Deputy-Chairman or of any two members of the Committee having been obtained, he is thereupon declared a defaulter, and an officer of the Stock Exchange, called the Official Assignee, at once ascertains



and declares the actual market prices, ruling immediately before the default, of the several securities in which the defaulter has transactions open. By the rules and practice of the Stock Exchange members having bargains open in stocks and shares, which the defaulter has contracted either to take or deliver, but which contracts he breaks by his default, pay to the Official Assignee of the Stock Exchange the difference in value of the stock or shares in which they have dealt with the defaulter as determined by the prices fixed by the Official Assignee at the time of default, when the change in price of any of such stocks or shares is against such members; and, on the other hand, become entitled to claim against the fund so created in the hands of the Official Assignee for any such differences when in their favour. The defaulter does not by reason of his default acquire under the rules of the Stock Exchange any right or claim to differences or damages against the members with whom he has dealt in respect of the contracts broken by him by his default, nor to the moneys payable as differences to the Official Assignee of the Stock Exchange under the rules of the Stock Exchange. The object of the rules is to adjust the accounts of the members as between themselves, dropping the defaulter by reason of his default out of each series of bargains in which he may have been one of the successive contracting parties. If, as frequently occurs, the principal of a defaulting broker goes, on or before the account day, to a member who has had a transaction open with the defaulter at the time of his default, and asks to complete the bargain, the member is bound to complete it; but still, by the rules, he is bound to account for and pay to the Official Assignee any amount received by him in excess of the price fixed by the Official Assignee at the time of the default for the stock, the subject of the bargain.

“Had Mr. Plumbly not become a defaulter, and not become a liquidating debtor, and had all the contracts matured and been duly performed by him, none of the differences created and received by the Official Assignee of the Stock Exchange in consequence of his default could have found their way into Mr. Plumbly's hands or possession. If the contracts had matured and been performed in the usual way by the payment or receipt of differences, these differences would not have been the same in amount as the differences which became payable to or claimable against the Official Assignee in respect of the contract by reason of the default as hereinbefore stated. In

payment of differences bank notes or cash do not pass, and cannot be demanded. All payments on account of differences must be by crossed cheques on a Clearing House banker, and the whole of the differences to which any member of the Stock Exchange becomes entitled, and which he is liable to pay on each account day, must all pass through the Clearing House together, and he never receives, and by the rules of the Stock Exchange never can receive, more than the balance, if in his favour, between the differences he has to receive and to pay as one of the various series of dealers with whom he has had transactions, and then only if this ultimate balance of all his transactions prove to be in his favour, that is, if he has made a profit on the account; otherwise the general balance of all his dealings goes to his debit through the operations of the banker's clearing. The credit differences of each member of the Stock Exchange are thus, and are intended to be, directly hypothecated for the payment of his debit difference. This practice, established by the rules and by invariable custom, secures all the differences payable by each member on the moneys receivable by him, and protects the vast amounts of the crossed cheques drawn on bankers on every account day by cheques of nearly similar amounts payable and receivable by the same members on the same day.

“ It may happen, and does occasionally happen, in cases of default on the Stock Exchange, that the amount of credit differences payable to the Official Assignee is more than sufficient to pay the total amount of the debit differences claimable from the Official Assignee, as, for instance, if a member fails to receive in due course remittances from principals or correspondents, or if members with whom he may have dealt, or from whom he may have to receive moneys, themselves make default. In any such case, where the amount of the credit differences exceeds the amount of the debit differences, the balance is applicable for or towards discharge of any claims other than for differences. Except in such cases as those last mentioned, the balance of a defaulter's dealing on the particular account is invariably against him, inasmuch as it is owing to the fact that he finds that, as the result of all his transactions for the particular account day, the balance will be against him, that he announces his default, and there can be no moneys which could ever be receivable by the defaulter himself, or anyone on his behalf, in respect of his open contracts, even had such default not occurred.”



The custom and rules set out were applied in a case where a stock-jobber was declared a defaulter, and on the same day filed a petition in bankruptcy, and a receiver was appointed. The receiver gave notice to members of the Stock Exchange, from whom differences were due, to pay the same due from them under the rules to him, on the ground that they were part of the debtor's estate, and obtained an injunction restraining the Official Assignee from receiving or collecting any of the assets of the debtor, including debts and balances due from members of the Stock Exchange, until after the appointment of a trustee of the debtor's estate. By the order for the injunction it was also determined that the amounts collected by the Official Assignee and all moneys received, or to be received, by the receiver from members of the Stock Exchange should be forthwith paid into Court to abide the decision of the question between the parties. The question then was, could the receiver claim the differences as assets of the debtor or not. The Court said that he could not, since the fund was an artificial one which never belonged to the bankrupt, but had been created by the rules of the Stock Exchange for a particular purpose, and only had an existence for the purpose of being dealt with in a particular way.

Such being the nature of differences, it is obvious that they are not assets that can be touched by outside creditors, and therefore there is the very greatest distinction between differences and assets, which are not differences. This is made clear in *Tomkins v. Saffery* (1877), 3 App. Cas. 213, where a defaulter called his Stock Exchange creditors together, and informed them that he had no debts outside the Stock Exchange, and the Stock Exchange creditors agreed to accept a composition, the debtor to provide for a part of it by handing the Official Assignee a cheque for £5,000, then standing to his credit at the Bank of England. The Official Assignee obtained the money and apportioned it amongst the Stock Exchange creditors. The debtor subsequently confessed to owing large amounts to outside creditors, and was declared bankrupt. The Trustee in Bankruptcy claimed the £5,000, and it was held that he was entitled to claim it, since the payment to the Stock Exchange creditors was an undue preference, the *cessio bonorum* constituting an act of bankruptcy, and the money being paid with a view of giving the Stock Exchange creditors a preference.

Therefore, where the Official Assignee has received differences only,

they cannot be touched by the Official Receiver or Trustee in Bankruptcy; but it is otherwise with assets which are not differences, for then, if bankruptcy supervenes within three months, the Official Assignee will be responsible for them to the Trustee in Bankruptcy. The term "assets" in the Stock Exchange rule, which empowers the Official Assignee to collect the assets of the defaulter, means all the assets. Therefore, when the rule is brought into operation the effect is to create an assignment of the assets of the defaulter to the Official Assignee.

Accordingly, when a member of the Stock Exchange was indebted to a firm in the sum of £187 10s., and he became a defaulter and sold shares which he held on behalf of the Official Assignee to the value of £315 15s. to the defendants, and the defendants paid £128 5s. and claimed to set off the balance of £187 10s. as a debt due from the defaulter, the defendants well knowing the defendant's position and that of the plaintiff, it was held that there was no right of set-off, since the Official Assignee was in the position of an equitable assignee of all the assets (*Richardson v. Stormont, Todd & Co.*, (1900), 1 Q. B., 701). Since the assignment is an assignment of all the assets of a defaulter, it binds not only Stock Exchange creditors but all creditors. Therefore, where an outside creditor had obtained judgment against a defaulter and sought to obtain a charging order against a sum of money which had been recovered by the Official Assignee in the course of his duty in collecting the assets of the defaulter by an action brought in the name of the defaulter, it was held that no order could be made, the defaulter's assets being equitably assigned to the Official Assignee (*Lomas v. Graves & Co.*, (1904), 2 K. B., 557).

In the course of his judgment, Stirling, L.J., said: "It appears that in July, 1903, the defendants' firm were declared defaulters on the Stock Exchange, the effect being that the rule of the Stock Exchange came into operation by which it is made the duty of the Official Assignee to collect the assets of a defaulter and distribute them among his creditors on the Stock Exchange. The meaning of this rule has been the subject of consideration by the Courts in several cases, and particularly by the House of Lords in *Tomkins v. Saffery*, and the Court of Appeal in *Richardson v. Stormont, Todd & Co.* The interpretation placed upon the rule in these cases appears to be that the word 'assets' therein means all the assets of



the defaulters, and that these are made applicable by the Official Assignee for the benefit of the defaulter's creditors on the Stock Exchange. This provision of the rule is one of the terms upon which the member agrees to become, and is admitted to be, a member of the Stock Exchange ; and, so long as it does not conflict with the law of the land, it is valid. In certain events it may conflict with that law ; for it may bring about what has been called a *cessio bonorum*, that is to say, an assignment of all the goods of the defaulter to the Official Assignee of the Stock Exchange, in trust for a particular class of creditors ; and in the case of *Tomkins v. Saffery*, in which bankruptcy proceedings were subsequently taken against the defaulter, it was held that such an assignment amounted to an undue preference of creditors, and was bad as being an act of bankruptcy. No steps have been taken in the present case to procure an adjudication of bankruptcy against the defendants, and, in the absence of such an adjudication, the assignment to the Official Assignee of the Stock Exchange under the rules remains valid. In *Richardson v. Stormont, Todd & Co.*, it was held that the effect of the Stock Exchange rules on the subject had been to create an equitable assignment to the Official Assignee of the assets of the defaulter. Such an assignment likewise appears to have resulted in the present case from the operation of the Stock Exchange rules as regards the money here in question. The Official Assignee discovered among the assets of the defendants a debt to them from one Ashby, against whom he brought an action in the name of the defendants' firm to recover that debt, in which action he succeeded in getting money paid into court. The plaintiff commenced his action against the defendants in May, 1904, and recovered judgment on June 10th. At that time the money in question had been paid into court, and the plaintiff applied for an order charging it with the amount of his judgment. To this application the answer was made that Graves & Co. were merely nominal plaintiffs in the action against Ashby, the real plaintiff, who was entitled to the money paid into court being the Official Assignee of the Stock Exchange. The learned judge held, as it seems to me correctly, that on the authority of *Richardson v. Stormont, Todd & Co.*, the answer so made to the application of the plaintiff was a good one."

The settlement of the differences due to and by the defaulter's estate is not altogether an easy matter. Some of the rules have been

previously given. A claim which does not arise from a Stock Exchange transaction cannot be proved against a defaulter's estate.

(1) A creditor receiving, under any circumstances, a larger proportion of differences on a defaulter's estate than that to which each of the creditors is entitled must refund such portion as shall reduce his dividend to an equality with the others ; (2) creditors for differences have a prior claim on all differences received by or due to a defaulter's estate (R. 179) ; (3) members not receiving due payment for securities delivered on the day of default are entitled, so far as regards the value thereof at the average price on the day of delivery, to be paid *pro rata* and preferentially, out of assets resulting in any manner from such securities, or derived from the defaulter's own resources, and should these prove insufficient they shall as to the balance of such claims participate with other creditors in any surety-money of the defaulter ; (4) in the case of a loan of money made upon securities the lender must realize his securities within three clear days (unless the creditors consent to a longer delay) or he must take them at a price to be fixed by the Official Assignee (with appeal to any two members of the Committee). Should the security prove insufficient the difference may be proved against the defaulter's estate ; (5) a loan without security shall not be admitted as a claim on the differences of a defaulter's estate, nor shall any such loan when of longer duration than two business days be admitted as a claim on any other of his assets, and should any unsecured creditor receive payment of his loan from a member on the day of his default, such payment being made out of assets not belonging to the defaulter previously to that day he shall refund the amount so received for the benefit of the defaulter's estate ; (6) claims arising from differences which have been allowed to remain unpaid for more than two business days beyond the day on which they become due will not be allowed to rank against a defaulter's estate until all other claims have been paid in full ; (7) differences overdue and paid previous to the day of default are not to be refunded ; (8) a member who has delivered securities to a defaulter and has not received due payment thereof should immediately apply to the defaulter for a return of the securities, and if such securities were delivered on a ticket the member who had delivered should immediately apply to the member next to him on the trace for payment, handing him the defaulter's dishonoured cheque and the securities



(if any) recovered. In the case of tickets issued by the Settlement Department application should be made to that department for the trace. Each member on the trace should act in a similar manner until the ultimate member who dealt with the defaulter is reached. This member should immediately lodge his claim with the Official Assignee. If an intermediary on the trace be a defaulter the dishonoured cheque and securities (if any) should be delivered to the Official Assignee. In the case where a defaulter is a broker, immediately on the declaration, members having accounts open with him should apply to the Official Assignee for the names and addresses of the clients (if any) for whom the bargains are open. If the client is in default all bargains open for him should at once be closed by sale or purchase in the market. Putting the stock or the shares on the "book" without a definite agreement with the client is not closing. (a) If the client is not in default the member should immediately communicate with him. If desired, the Official Assignee will supply a suggested form of letter. (b) A client not in default is bound to complete his transactions at the price of the bargain, or in the case of securities carried over at the last making-up price and rate. (c) The client may complete the transactions direct with the member or appoint a broker, banker, or other agent to complete on his behalf, but no member is compelled to take instructions from the client to "make down." (d) If the client gives instruction to close, the member is at liberty to do so, the difference between the bargain price and the closing price being payable by the client to the member, or by the member to the client as the case may be. Putting the stock or shares on the "book" without a definite agreement with the client is not closing. (e) If after due communication the client fails to give instructions by 3 o'clock on the day before Contango day (or by 11 o'clock on Saturday if the Contango day be Monday) the member is entitled to claim forthwith.

As soon as a client has personally completed his bargain, or the member has agreed to "make down" with a new broker, a supplemental account must be furnished to the Official Assignee setting out only the bargains completed. This account will be the same as regards the prices as the former "Hammer Price" account, but with these items on the reverse sides. If this account

shows a difference due to the Official Assignee it must be paid when due. If the account shows a difference due to the member furnishing it, such difference will rank as a preferential claim on differences and be paid in full, if the differences in the Official Assignee's hands are sufficient.

It will be seen that the object sought for by these rules is to ensure no creditor shall receive from the defaulter's estate a larger proportion of differences than any other creditor. In other words, equality is aimed at. It is, however, not quite so easy to attain. For sometimes there are two sets of differences to be dealt with. For instance, a broker may have carried-over from the mid-monthly account to the end-monthly account and may be declared a defaulter for not having carried out his liabilities on the mid-monthly account. The first set of differences arose in respect of the carrying-over where the price is fixed on the making-up day ; the second in respect of the default. The differences are adjusted by setting off one set of differences against the other, and then, under Rule 180, by refunding, if he has received a larger proportion of differences than the other creditors, such portion as shall reduce his dividend to that of the others. The fund arising from differences, being a special fund for a special purpose, is applied first in payment of differences due from the estate, and only any balance that may remain after these have been paid is applicable towards the satisfaction of any other claims. In *re Plumbly, ex parte Grant*, L.R., 13 C.D. 667, 673 it has already been stated that members, who have delivered securities and have not received payment, are entitled to preferential payment out of the assets realized by the sale of such securities (Rule 184).

The principle with respect to loans of money made upon securities is that they immediately become due on the borrower making default. If the security for the loan is pledged for less than the market value, as would be the ordinary case, the loan, unless the creditors consent to a further delay, must be realized within three days, or be taken over at a price fixed by the Official Assignee. Reference, however, can be made to the Committee in any case of dispute. Where the security is insufficient the difference may be proved against the estate. Not every loan, however, is treated in this way, for loans without security are not admitted, as would be expected, against the fund arising from differences—and if the loan was for a longer period than two



business days, it is not admitted as a claim against the defaulter's assets, although it is clearly a debt. Claims not arising out of a Stock Exchange transaction are not admitted to proof, nor such Stock Exchange transactions as the Committee do not recognize, as, for instance, options or bargains for a period beyond the accounts. Non-members are allowed to participate in defaulters' estates provided that their claims are admitted by the creditors, or, in case of dispute, by the Committee, and persons whose claims are so admitted may be represented at the meeting of creditors by any member whom they may select (Rule 187). It has already been stated that it is the duty of the Official Assignee to collect the Stock Exchange debts and assets, and these are recovered from members, since members are not allowed by the rules to sell, assign, or pledge their claims to non-members without the consent of the Committee, and all such assignments must be immediately communicated to the Official Assignee (see Rule 188). Members are permitted, however, to carry on a defaulter's business with the creditors' consent and with the permission of the Committee. But this permission is generally only granted pending the settlement of the defaulter's affairs. The following regulations have been made as to the transaction of business for a defaulter's benefit under Rule 190: the defaulter being a person who has ceased to be a member because his election is cancelled under Rule 42 by reason that he has no share qualification, or because he has transferred it, or under the provisions of Rules 45 or 173 (see appendix), or after ceasing to be a member from any cause becomes bankrupt. A member may not deal with a defaulter for his own account before his readmission to the Stock Exchange, nor carry on business with a person who has been expelled from the Stock Exchange. These regulations require that a preliminary report from the Official Assignee must be submitted to the Committee. The permission expires on the next 25th of March. Speculative business for the defaulter or for clients introduced by him is not allowed. Business for clients of the defaulter who are in default to him or other members is not allowed. The Official Assignee causes meetings of creditors to be called where of course the defaulter's affairs, and any offer that he may have to make with reference to a composition, are discussed. The estate is wound up under the creditors' direction by the Official Assignee.

The scale of charge to be paid to the Official Assignees Department is 5 per cent from £1 to £5,000 collected, and from £5,000, 1½ per cent. Sums received from the estate of another defaulter upon the same settlement and redistributed must be charged with half the above percentage.

It is the duty of the Official Assignees to collect and pay the assets into such bank and in such names as the Committee may from time to time direct. The net proceeds of the collection after payment thereof of all legal and other expenses (including in respect of the office and administration expenses of the Official Assignees a poundage or percentage on collections at a rate to be approved from time to time by the Committee) and any allowances or payments to the defaulter or his clerical staff which may be authorized by the creditors in General Meeting or by any Committee of creditors appointed by a General Meeting, are required to be distributed as soon as possible amongst the creditors in accordance with these rules up to 20s. in the £ on the admitted claims, but without interest. Any surplus after such payment has been made, should there be any, shall be at the disposal of and shall be returned to the defaulter.

The operation of the closing rule as it affects members has already been discussed. It is now necessary to show how it affects non-members.

If A, a member of the public, buys through B, his broker, of C, a jobber, the matter is an exceedingly simple one, since B, the broker, is the agent of A, to make the contract. A could therefore sue C direct, or C could sue A, except for the fact that the contract is made subject to the Stock Exchange Rules (cf. Rule 189).

A jobber's right to compel the client of a broker who has defaulted to complete the contract made by the broker on his behalf has frequently been discussed.

In *Beckhuson & Gibbs v. Hamblet* (1900), 2 Q. B., 18, the defendant employed a firm of brokers to purchase for him certain shares in an undertaking, and instructed them to carry over 210 of these shares to the next account. The brokers, having other orders from other clients, purchased by a single contract in their own name 360 of these shares for the next account from the plaintiffs, who were jobbers on the Stock Exchange, and they apportioned in their books 210 of these shares to the defendant. The brokers, before the next



settling day, were declared defaulters, the Official Assignee fixing the price in accordance with the usual custom. The plaintiffs tendered the 210 shares to the defendant, and on his refusing to accept them sold them on the settling day and claimed from the defendant the difference. The plaintiffs failed by reason of the lack of privity of contract, owing to the lumping together of the defendant's orders with other orders. The judgment of Mr. Justice Kennedy, however, is of considerable importance because he discusses the operation of the rule (then rule 177) by which the Official Assignee publicly fixes the prices in the case of failure. Mr. Justice Kennedy said: "According to the practice of the Stock Exchange, the defaulting broker's client, if he is not himself in default to the broker, has the right to have the transaction carried through between himself and the jobber with whom the broker has contracted in respect of shares in which he is interested, or to accept the Assignee's closing, or to transfer the account in respect of his shares to another broker for the purpose of carrying out the bargain through him. If the client chooses to accept the closing price, then, according to *Hartas v. Ribbons* (22 Q. B. D., 254), but not otherwise (*Duncan v. Hill*, (1873), L. R., 8 Ex. 242), he is bound to indemnify the defaulting broker in respect of the difference found, upon the official closing, to be against him, and in favour of the jobber. If the client of the defaulting broker does complete the transaction which the jobber had open with the defaulter at the time of his default, and upon completion the jobber receives any amount in excess of the price fixed by the Official Assignee at the time of the default for the stock which is the subject of the bargain, the jobber is bound to account for and pay over this excess to the Official Assignee."

In *Anderson v. Beard* (1900), 2 Q. B., 260, the defendant employed a broker to purchase for him certain shares, and afterwards directed him to "carry over" the shares to the next account. The broker did not disclose the defendant's name. The shares were carried over, the broker having defaulted. The plaintiffs, the jobbers, took back the shares at the hammer price, and requested the defendant to take up the shares. He declined. The plaintiffs then sold the shares for the best price obtainable. This was lower than the hammer price. The defendant contended that if he was liable, which he did not admit, it was for the hammer price only. It was held that as he had not adopted any of the three courses open to

him, viz., (1) to employ another broker ; (2) to take the shares ; or (3) to treat the transaction closed at the hammer price, the plaintiffs were entitled to rescind the contract, the repudiation of liability entitling the plaintiffs to treat that as a rescission.

In *Levitt v. Hamblet* (1901), 2 K. B., 53, the shares, on the client of the broker declining to take them, were sold at the best price obtainable, and evidence was given by the Official Assignee that there was no usage in the Stock Exchange which entitled a client when the broker was declared a defaulter to insist upon closing the transaction at the hammer price. Romer, L. J., in the course of his judgment, said : " No usage has been proved that on the default of the broker the client shall have the option as against the jobber, or the jobber have the option against the client, to treat the contract of purchase or sale as closed at the prices ruling at the date of the hammering. We can only recognize the evidence that exists in this particular case ; and on the evidence before us it is clear to my mind that we must accept the usage proved as not giving or conferring any such option, nor, indeed, has the existence of such a usage, conferring such an option, been so established in other cases, or so generally recognized that we ought to assume its existence. On the contrary, I cannot find that in any case the existence of such a usage has been definitely proved, where the existence of it was material for the decision of the case, or any case in which it has been recognized by the judges as a usage of which the Courts take judicial cognisance. The closing rule in no wise affects the position of outsiders : what rights they had before they maintain. The right of the jobber to compel the client of a defaulting broker to complete is affected by the fact that the jobber has proved against the estate of the defaulter for differences due to him by reason of the closing at hammer prices, and has been paid such differences in full because the jobber is accountable to the Official Assignee for the amount recovered, or if that amount exceeds the sum already received from the broker's estate, then for the latter sum." In *Stoneham & Messenger v. Wyman* (6 Com. Cas. 174), a broker had purchased from a firm of jobbers 100 Lake View shares, which had been carried over with the plaintiffs from the mid-December account, 1899, to the next account at 16 $\frac{3}{4}$ . The broker was declared a defaulter on the pay-day of the mid-December account, the hammer price being 15 $\frac{1}{4}$ . The jobber proved against the



defaulters' estate for £150, which they had received in full. The defendant contended that the bargain had been closed at the hammer price, and that he was in consequence not liable to take up and pay for the shares from the plaintiffs, and refused to pay for them. Thereupon the jobbers sold at  $11\frac{1}{8}$ , and claimed £495, the difference between 100 at  $16\frac{3}{4}$  and 100 at  $11\frac{1}{8}$ . The jobbers were compelled to refund the £150 to the defaulters' estate, but they were held entitled to receive the £495.

It is clear that the client has no right to claim the benefit of the selling-out price under the selling-out rule, since the rule applies to members only. Therefore, where a jobber, the plaintiff, had applied to the client of the defaulting broker for a name, which the client refused to give, and the jobber sold out the shares on the market, the objection that the shares ought to have been sold out by the selling-out department was overruled (*Scott v. Ernst*, 16 T. L. R., 498), the rule as to buying-in and selling-out being directory and not imperative, although the word "must" is used.

Appendix 36, Clause 6 (b) of the Stock Exchange Rules, insists that a client not in default must complete his transaction at the price of the bargain, or in the case of securities carried over at the last making-up prices and rates. The broker acting for the defaulter must take his instructions to close the bargain from the client of the defaulting broker, or broker, banker, or other agent whom the client may have appointed.

A question has arisen as to whether authorized clerks are bound by the rule: that is to say, where a broker has dealt with an authorized clerk, is the authorized clerk entitled to have the benefit of the closing at the hammer price or not? The rule uses the term member, and the authorized clerk is treated as bound by the Stock Exchange rule.

The case where the jobber has defaulted still remains to be considered. How far is the broker liable to the client, (1) where the jobber's name is not disclosed, (2) where the jobber's name is disclosed? Now the broker is employed as an agent, and must not act as principal, and the client is aware that he is acting as agent. Apart from custom, therefore, since an agent would not be personally liable for the financial default of his principal, the broker is not liable for the jobber, and no such custom on the Stock Exchange rendering the broker liable has been successfully proved, although

attempts have been made to prove it. In *Gill v. Shepherd* (8 Com. Cas. 48), the client made an attempt to prove it, but failed (see also *Wildy v. Stephenson* (1884), *Cababé & Ellis*, 3). Where the jobber's name is disclosed, obviously there can be no liability on the part of the broker. In such cases therefore the only remedy the client has is against the jobber, and in respect of that he can claim to come in with the other creditors, if necessary, by getting some member of the Stock Exchange to represent him, or he can pursue his remedies at law.

It is naturally of the greatest importance that the Official Assignee should be put at the earliest moment in possession of the defaulter's books and papers, and, to meet a difficulty that may arise from a defaulter declining to give up his original books and accounts and a statement of the sums owing to and by him in the Stock Exchange at the time of his failure, there is a rule which declares that no defaulter shall be re-admitted who does not, if required, give up the name of any principal indebted to him, or who within fourteen days from the date of his failure shall not have delivered his original books and accounts and a statement of the sums owing by him to the Official Assignee, or to his creditors. Having regard to the penalty imposed by this rule, and the natural desire of defaulters at some time or other to be re-admitted there is generally little difficulty in the Official Assignee and the creditors obtaining the information requested.



## CHAPTER XI

### THE ACCOUNT—THE CONTANGO, CONTINUATION, OR CARRYING-OVER DAY

IN a large measure the business of the account or settlement concerns broker and jobber, though naturally it is of the utmost importance to the client to know something about it. The Committee at their first meeting in September fix twenty-four Account days for the ensuing year. Should the Account be so fixed that the Contango Day would in the ordinary course fall on a Saturday, the Contango Day is the preceding business day. The Secretary gives notice of the days thus appointed. The fortnightly accounts vary in period from 11 days to 19 days, and each account or settlement covers four days : (1) the Contango Day, (2) the Ticket Day, (3) the Intermediate Day, and (4) the Account Day.

Now, all stocks and shares bought or sold for the current account, unless they come within the list of exceptions, must be paid for at the ordinary settlement, or carried over or continued for another account. Forward bargains and options for settlement on the account days are prohibited in all securities under the headings "British Funds" and "Colonial and Provincial Government Securities." The manner in which the transaction is completed by payment and delivery of the security will be discussed later on. The process of making-up or continuation may now be stated. In carrying over or continuing a price has to be fixed, which is known as the making-up price. This price is determined by the clerks of the House in the various markets, and is based upon the actual market price at mid-day. The rule says that "continuations are bargains and not loans and they must be effected at the making-up price or at the then existing market price." The reason for a making-up price arises from the practice of carrying over or continuing bargains, and this in turn arises, because it is often impossible for every buying or selling transaction to be completed at the stipulated time. For a buyer might be disappointed at not receiving the money he expected to receive

in time to pay for the shares he had purchased, and might desire an extension of time till he did receive the money. Bonds or shares, on the other hand, might not be available for delivery from a variety of causes. In fact, so many circumstances might render it desirable for a buyer or seller to postpone his bargain, apart from pure speculation, that continuation or carrying over became a necessity which the Stock Exchange had to recognize. As a rule, continuation or carrying over in practice is a speculative convenience, in which market considerations play an important part. The following illustration shows the method by which the bargain is carried over, and explains the necessity for a making-up price. X, who is a purchaser of 100 shares, during the account finds that he is unable to complete his purchase at the account, and, therefore, desires to postpone his payment to the next account. He instructs his broker to carry over his shares. The seller is agreeable to postpone the payment for a consideration, and for this accommodation he charges the purchaser interest for the use of the money employed in holding over the stock till the following settlement. This interest is known as the rate of *contango*, and is now usually fixed at a certain rate per cent per annum on the money, though in many instances, especially in the Railway and Miscellaneous markets, at so much per share or per £100 stock. It was not so very long ago that in the mining market the same system of charging so much per share was in vogue, but of late years it has been superseded by rates of interest per annum, and to this now there are very few exceptions. Chartered shares may be noticed as one that is a regular exception. Now, to effect his purpose and accommodate the buyer, the seller has to enter into two transactions; first, he has to re-purchase the 100 shares he has sold, and, secondly, to enter into a fresh contract for the sale of the shares for the next account. The first transaction has to be completed on the account day to close the original bargain, and the second, or fresh contract, is made for the following account day. Now, obviously, since X has to pay for the shares, the price at which he re-sold and re-purchased would be immaterial except for the fact that the difference has to be paid at once, for, supposing the 100 shares cost £50 originally, and their market price was £40 on the making-up day, and their market value was not more than £30 when they were finally paid for, X would still have to pay £50 for



the shares. Although he would only pay on taking up the shares the last carrying-over price value, he would have already paid in differences the balance between that price and the price he originally bought at. The nominal intermediate price would have had no effect upon the contract, but by reason of differences having to be paid at once the making-up price becomes of importance. First, because it shows the difference payable on a re-sale to close the first contract ; secondly, because it fixes the price at which the second contract for the sale of the shares is made. If there were no making-up prices X would have to negotiate a new contract.

Supposing X, instead of being a buyer, is a seller of 100 shares at 10s. a share. X does not possess shares, and is simply a bear. He desires to postpone delivery till the next account, and instructs his broker accordingly. X, however, as a seller, has to deliver, and, for the purpose of delivery, to borrow stock. In the ordinary way he would then receive contango, but sometimes when stock is scarce he would have to pay a premium on the stock borrowed, or otherwise backwardation. In addition, if the stock has risen X would have to pay a difference.

In both instances where X is a bull and X is a bear the terms contango and backwardation have been used, but whether a contango or backwardation has to be paid depends upon the law of supply and demand : if there is a demand for money by reason of a bull account being open, and there is a plentiful supply of stock on the market, the result is that there is a contango, but should there be a scarcity of stock for delivery against sales, the contango may be converted into a backwardation for sellers who have sold stock which they are not in a position to deliver.

There are other considerations which affect the rates of contango or backwardation which may be here mentioned. For instance, there is the state of the money market as indicated by the weekly return of the Bank of England, which is issued every Thursday, and posted up in the Stock Exchange, and the publication of the daily records of the movements of bullion, either into or out of the Bank of England. The form and the details of the weekly report are prescribed by the Bank Charter Act of 1844. In this return is shown the amount of notes in circulation, the stock and bullion in reserve, and such other matters as enable financiers to judge of the state of the money market and of its probable tendency. Again,

rates are affected by the nature of the stock or shares as a money security. Some of the stocks or shares are of a speculative character, liable to violent movements up or down; there is a risk that the taker-in, if the borrower should happen to be declared a defaulter, may have to close his account at a loss. With regard to backwardation, a stringency of money would tend to lessen the rate charged, because a bear, in obliging the bull, by postponing delivery of shares, frees the bull from the necessity of finding money, and gives him consequently the use of it for the account, but, if there has been real and heavy buying as distinguished from speculative buying, there is created a scarcity of stock which has the effect of making the backwardation heavier.

The surest guide to the probable state of the markets is obtained from a study of the weekly report of the Bank of England. The reason why this return is so valuable as an indication is because all the banks of the United Kingdom keep their bullion reserves at the Bank of England, and this reserve is increased or diminished by the increased or decreased demand for money in the country or the withdrawal of gold for foreign purposes. A scarcity of money means a high rate of interest, and this has a tendency to check speculation, for the contango is necessarily heavier.

Returning to the *modus operandi* of continuation in the example that has already been given (p. 225), it was supposed that the seller was willing to oblige X, the buyer, and consequently the transaction was a simple one, but in practice the actual buyer and seller do not generally meet. The broker of the buyer approaches the jobber with whom he originally had the transaction, and consequently with whom the shares are open, and arranges with him to lend the shares to the jobber, and to borrow money on them at interest till the next settlement, and so on until the transaction is finally closed. If the shares have been sold and the broker's client is a bear, the reverse operation takes place. When the jobber is approached by the broker he quotes two rates of interest, at the lower of which he is prepared to borrow the money and lend the stock, at the higher of which he is prepared to lend the money and borrow the stock. At the end of the operation for contango the jobber carries to his profit and loss account the difference between the cost of the money he has borrowed and the interest he has obtained on the money he has lent. Again, a buyer may continue



the transaction with any other person, for instance, a money broker, since, having sold his shares, he would stand to take up shares from one member and deliver them to another ; he then would stand as a buyer for the ensuing account instead of for the current. Again, the buyer may go outside the Exchange and pawn the shares with his banker or other person who may be willing to lend on the security (this enables him to be independent of the Stock Exchange), or his broker may take in the shares himself, and this is a practice which is commonly adopted by brokers, who are able to obtain money from their bankers at a low rate of interest. One particular advantage of this practice is that a middle rate of interest is thus more likely to be obtained than if the transaction were carried out through the jobber, for, as explained on continuation, the jobber quotes two rates of interest—a higher and a lower rate—the rates respectively being what he would give and what he would take. The jobber pays the lesser rate and receives the greater, the difference representing his turn ; if purchaser and seller had been directly in touch through their brokers, the jobber's turn would probably have been eliminated.

It is now possible to examine the legal position created by some of these methods of carrying-over or continuation : (1) Where the stock is taken in, then the taker-in becomes the purchaser of it, and the property is in him. In other words, he buys it subject, however, to the obligation to deliver back a similar amount of stock at the same price for the next account. (2) Where a loan is advanced upon the stock the lender is not the purchaser of securities, and he is not entitled to place beyond his control securities received as security for a loan, and he may, after reasonable notice and upon payment of the principal, together with interest up to the time for which the loan was originally made, be required to return the identical bonds, or to re-transfer the securities given as security for such loan. If the lender sells and makes a profit before the loan is due he must account for it to his mortgagor (*Langton v. Waite*, (1869), *L.R.*, 6 *Eq.* 165). Any usage authorizing a mortgagee of securities to deal with them as his own, and on being paid off to re-transfer similar securities, would consequently be bad. In the ordinary way, a mortgagee of stocks and shares has a power of sale. When the time fixed for payment has elapsed, and where there is no time fixed for payment,

he can sell after a reasonable time (*Re Morritt*, (1886), 18 *Q. B. D.* 222 ; *Tucker v. Wilson*, 1 *P. Wm.'s*, 260, reported also *sub. nom. Wilson v. Tooker*, 5 *Bro. P. C.*, 193), the ground being that the value of the stocks being subject to fluctuations the necessity for obtaining a decree of foreclosure would as a matter of business destroy the security (*Deverges v. Sandeman, Clark, & Co.*, (1901), 1 *Ch.*, 70).

Where a certificate of shares is deposited as a security for a debt and interest without a transfer or memorandum, the remedy of the lender against the shares is to obtain an order for transfer and foreclosure, for a pledgee has only a special property in the thing pledged : " He may obtain a sale, but he cannot obtain a foreclosure," but a deposit of a certificate or shares is not a pledge. " A share is a chose in action ; the certificate is merely evidence of title." " The deposit of a certificate by way of security amounts to an equitable mortgage, or to an agreement to execute a transfer of the shares by way of mortgage " (*Harrold v. Plenty*, (1901), 2 *Ch.*, 314).

But the liability does not apply to a member who has taken in shares or stock upon continuation (Rule 107).

Assuming that an irregular sale of shares has taken place, what is the mortgagor's remedy ? He can, if he chooses, charge the mortgagee with the price he gets for them. During the existence of the loan the mortgagee, in the absence of stipulations to the contrary, must pay calls which fall due and account for dividends or a bonus (*Vaughan v. Wood*, (1833), 1 *Myl. and K.* 403). The measure of damages for non-delivery at the appointed time is their value at the time they should have been delivered or at the time of the trial (*Owen v. Routh*, (1854), 14 *C. B.*, 327).

Continuations are not always effected between the original parties to the contract. Brokers frequently take in stock for their clients. In such cases questions may arise and have arisen as between client and broker as to the rights of third parties and clients. Where the securities remain in the broker's possession and the broker becomes bankrupt the client is entitled to recover them, and in the case of money it may be followed where it can be traced, as the proceeds of the sale of the clients' security, in cases where the money is known to the broker to have been trust money (*ex parte Cooke, in re Strachan*, 4 *Ch. D.*, 123), and it seems that it would make no difference whether the trust was known to the broker or not, for,



apart from this question, the position of a broker is not that of a banker, but of an agent into whose hands money is placed to be applied in a particular way ; and such money, therefore, can be followed by the customer.

In *Hancock v. Smith* (41 C. D., 456) a broker had a sum of money at the bank, none of which belonged to him. A judgment creditor of the broker having obtained a garnishee order on it, it was held on appeal that the order must be discharged, since an execution creditor can only lay hold of what is the property of his debtor, and the evidence showed clearly that this money was paid in under such circumstances that no part of it was the debtor's own. In other words, the whole fund consisted of money not borrowed by the defendant from his clients, but received by him as agent for them, and, therefore, might be treated as trust money. The whole question of the rights of the client will be found dealt with when the fourth day, or Account day of the settlement, is discussed. The case of *Bentinck v. The London Joint-Stock Bank* (1893), 2 Ch. 120 has a special relation to the practice of carrying-over, for a considerable amount of evidence was there given as to the practice of taking-in of registered securities by brokers. It seemed that in this case stockbrokers had been employed by a client, and made for him from time to time speculative purchases of stock, shares, and bonds. The brokers furnished the money and the client authorized them to hold the purchased stocks, shares, and bonds as security for advances. The brokers deposited bonds, stocks, and shares with the London Joint-Stock Bank belonging to various clients *en bloc*, in respect of advances. Ultimately the brokers became defaulters, and were adjudicated bankrupts.

At the date of the default the bank held stocks and shares transferable by deed ; these had been transferred and stood in the names of trustees for the bank. Some of these transfers had been made by the client ; the consideration there expressed being nominal. Some had been made by the brokers and by third parties expressed for full value. The bonds passed by delivery. The client claimed to redeem his securities on payment to the bank of the amount due to the brokers ; the bank claimed to hold them till a larger amount due from the brokers was repaid. It was held that there was nothing to indicate to the bank that the stocks and shares transferred to their trustee were not the property of the brokers, and that therefore

the bank were *bona fide* holders for value, and the plaintiff could not redeem without paying the amount due from the brokers to the bank. With reference to the transfers executed by the client, since he had executed them, he was estopped from denying the authority of the brokers ; and since bonds were negotiable securities and the law lays no obligation on the lender to make an inquiry into the title of the person whom he finds in possession, the bank was entitled to hold these also (see *Simmons's Case*, (1892), *A. C.*, 201 on this later point).

The Stock Exchange rules, which affect the carrying-over, declare that in the case of all securities included in the Stock Exchange official list of making-up prices, the Clerk of the House shall fix the making-up prices by taking the actual market price at half-past eleven on each of the three days preceding the account day, and no making-up shall be binding unless at the official making-up price, or where none is fixed, at the then existing Market Price.

In case of dispute as to the making-up price or of any omission in fixing the same, the Clerk of the House shall act upon the decision of two members of the Committee.

The making-up prices so fixed must be published in the Stock Exchange official list of making-up prices under the authority of the Committee and subject to the regulations which are contained in Appendix 33, headed *Regulations as to the Inclusion of Securities in the Stock Exchange Official List of Making-up Prices*. Not all securities dealt in on the Stock Exchange are included in this list. The list is subject to revision at intervals of not more than three months. Securities not undertaken by the Settlement Department may only be included in the Official List for ordinary accounts subsequent to the first settlement upon the signed requisition of five members or firms, two of whom at least shall be brokers, but securities undertaken by the Settlement Department will be included in the Official List of making-up prices without requisition.

#### THE SETTLEMENT DEPARTMENT

The Settlement Department is an important branch of the Stock Exchange and plays a great part in its life, and its business is to clear up transactions on the securities it deals in, in the



speediest way. It includes both members and their clients, and any firm or member dealing either as a broker or dealer in securities of which the Settlement Department undertakes the settlement must be a member of that department, and every firm or member engaged in active business is required to have a box in the Settling Room. The business of this room is carried on principally by Settling Room clerks and a defaulter may be employed by a member as his clerk subject to compliance with the terms of Rule 65. Appendix 20 requires that any member applying for a Settling Room clerk must satisfy the Committee that (1) the clerk is of the requisite age, which is fixed for an unauthorized or Settling Room clerk at 17 ; (2) that the clerk would be in all other respects eligible for admission as a member ; (3) that he has obtained a satisfactory reference from the clerk's last employer; and (4) that he has a sufficient knowledge of the clerk's previous career. If the clerk has been in partnership out of the Stock Exchange he must submit to the Committee a copy of the *London Gazette* in which the dissolution of partnership is notified. (As to an application for a temporary unauthorized clerk, see Rule 60, Appendices 21 and 22 (*infra*), and as to badges to be worn, see Rule 68 and Appendix 30). A member may introduce two Settling Room clerks to the room ; a firm six ; and members may be employed as unauthorized or Settling Room clerks in excess of these numbers.

A member cannot demand bank notes in payment of differences, nor shall he be obliged to take a reference for payment to a non-member ; nor shall he be obliged to pay a non-member for securities bought in the Stock Exchange. The Clerk of the house fixes the making-up price of all securities included in the Stock Exchange official list of making-up prices by taking the actual market price at 11.30 on each of the three days preceding the Account Day, i.e. on the Contango, the Ticket, and Intermediate days. If there is none the existing market price is ascertained.

The time for the declaration of options is a quarter before three, or on Saturday, a quarter before one on the day before the Contango Day. If the day for the declaration of options should be one on which the Stock Exchange is closed they shall be declared the previous day. In the case of options done for and declared on the Contango Day, the bargains both for the firm stock, and the option

stock, shall be for settlement on the settling day of the following account. There are a number of other rules which must be observed in dealing with bargains and the settlement of accounts, which it will be necessary to discuss. For present purposes it is sufficient to mention them, but they are closely connected with the settlement of accounts. To return to the business of the Settling Room---

On the morning of the Account Day all unsettled bargains on securities delivered by deed of transfer must be brought down and temporarily adjusted at the making-up price of the Contango Day, and a like rule applies to securities passing by delivery.

The second day of the account is known as the Ticket Day.



## CHAPTER XII

### THE TICKET OR NAME DAY

THE Ticket Day is the second day of the settlement, on which begins the intricate process by which the ultimate buyer and seller of stocks or shares are brought together. It is called the Ticket Day because of the passing of tickets on that day. A buyer who has purchased securities, whether deliverable by deed of transfer or passing by delivery which are dealt with in the Settling Room, is required by the Stock Exchange rules to pass a ticket either with his own name or the name of some other person, who is prepared to take up the stock or shares and pay for them. A fair proportion of this business is now transacted by means of the Clearing House, termed the Settlement Department. This department was originally instituted by private enterprise, with the approval of the Committee. It is now an officially recognized institution referred to in the rules and largely patronized. Nevertheless, there is no obligation on the part of any member of the House to belong to it. But if a firm or a broker or dealer deal in securities of which the settlement department undertakes the settlement, the firm or members must belong to it. It is supported by subscribers. Since the Settlement Department does not clear all stocks and shares, its agency is not in all cases available. Its object in cases where it can be used is to enable members to set off purchases against sales of similar securities, delivering or receiving the balance as the case may be, and paying or receiving the differences. Where there is no market or practically a very limited one, it is obvious that the services of the Clearing House would not be required, for its aim is the simplifying of dealings in stocks and shares in which the transactions are numerous. Hence there is an official list of stocks and shares which are dealt with by the Clearing House. In times of speculative activity there is always an increase in the number of stocks and shares included in its operations, and naturally there is a corresponding decrease in periods of depression.

Before explaining the *modus operandi* of the Clearing House or Settlement Department, it is necessary to explain more in detail what is meant by passing the ticket. In regard to registered stocks

and shares the practice of passing the ticket is ancient. An illustration may be shown of the working. Supposing that A, a broker, acting for a client, has sold shares on the Exchange to B, a jobber, who has sold to C, C selling to D, D to E, and E to F, a broker who has bought for a client. A, the broker, will ultimately deliver the shares to F and his client. A is the deliverer, F is the issuer of the ticket, being the buyer or the person who takes up the securities. F being the buyer who proposes to take up the securities deliverable by deed of transfer, issues a ticket with his name as payer of the purchase money. As the buyer, he must issue this before three o'clock on the Ticket Day. The passing of the tickets begins at ten o'clock. The ticket must contain the amount and denomination of the stock or security to be transferred, the name, address, and description of the transferee in full; the price, the date, and the name of the member to whom the ticket is issued. Each intermediate seller in succession to whom such ticket shall be passed must endorse thereon the name of his seller. Thus, as in the illustration above given, F, as the issuer of the ticket, having filled it up with the necessary particulars, passes it to E; E, having endorsed the name of his seller D, passes it on, the process being repeated till it comes to the hands of A, the deliverer, the person who is the ultimate seller, or the holder of the ticket. All tickets representing securities which at the time are subject to arrangement by the Settlement Department and all tickets representing securities dealt in in the Mining Markets or in the Rubber Section of the Miscellaneous Market which are included in the "Stock Exchange Official List of Making-up Prices," must be passed through the accounts at the making-up price of the Contango Day and the securities paid for at that price; but the consideration money in the deed must be at the price on the ticket. The Committee will not, except under special circumstances, interfere in any question arising from the delivery of securities by transfer in blank.

The ticket is made out in a printed book with a perforated counterfoil and the particulars are entered on the counterfoil with the name of the person to whom the ticket is passed. Thus, if F has bought on behalf of his client 100 Chartereds at £2, the ticket will then be in some such form as is shown on the following page.

The meaning of the words "X Y Z pays" is that he is to be



applied to by the vendors' broker for the purchase-money of the shares and a name, but it does not necessarily imply that he is to be the transferee of the shares (*Allen v. Graves*, 1890, *L. R.*, 5 *Q. B.*, 478).

The seller need not deliver his transfer or stock direct to X Y Z, whose ticket he holds; he may elect to deliver it direct to his jobber to whom he passed the ticket or with whom he dealt, and thus let the delivery pass right through the trace to X Y Z.

*All Dividends, New Shares, or other advantages are hereby claimed.*

No. 12380.  
100 Charteredds at £2—  
£200.  
Stamp.  
To John Slater,  
Laburnum Villa,  
Meredith Road,  
Twickenham.  
Given to E.  
26th of June, 19..

No. 12380. This number to be  
inserted if the ticket be divided,  
otherwise the New Ticket will not be  
paid for.  
Consideration £200.  
Stamps.  
100 Charteredds at 2.  
To John Slater,  
Laburnum Villa,  
Meredith Road,  
Twickenham.  
Given to E.  
26th June, 19..  
X Y Z & Co.  
Pay.

F's clerk will hand the ticket to E, whose clerk will enter the number of the ticket, the amount of shares, and to whom he passes it, viz. D, and D will repeat this process and so on until it reaches A. E's clerk will credit the amount in his ledger to F, and debit D at the making-up price in the case of a stock or share dealt with by the Clearing House, but if not so dealt with at the price on the ticket, paying or receiving any difference that may exist between such price and that at which he dealt with F and D.

On securities passing by delivery the deliverer of securities on tickets is required to apportion such securities to each ticket at the time of delivery, and the taker of securities, in order to secure his right under this Rule, must keep such tickets and the number of securities to which they were respectively apportioned, or in the case of Settlement Department tickets the numbers of such tickets. (Rule 134 (2).) In the case of securities deliverable by deed of

transfer, tickets may be issued and left at the office of the seller on the Contango Day (subject to the provisions of Rule 149) and up to three o'clock on the ticket day. After this hour all tickets must be passed in the Settling Room. Tickets may be placed in the boxes in the Settling Room up to eleven o'clock on the Account Day.

A member not refusing an antedated ticket when tendered as such takes it with all its liabilities, but if it be passed as an ordinary ticket the liabilities remain with the member putting such ticket again into circulation, and any member holding an undated ticket shall not be liable for any loss arising from the securities having been bought in, unless such ticket has been seven days in his possession.

A member who makes an alteration in or improperly detains a ticket must make good any loss that may occur thereby.

Before further explaining the process of the passing of tickets and the consequences which result from delay or a failure to pay, it will be convenient to refer to an operation which not unusually takes place over a sale of securities, which is known as splitting the ticket. It may also be desirable in this connection to refer to the working of the Settlement Department or Clearing House, and the part that it takes in preventing unnecessary trouble to members of the Stock Exchange who are also members of the Clearing House.

Splitting the ticket is an elaboration of the ticket system, and is caused by the fact that a ticket that is passed may reach the hands of a jobber, who has sold a block of shares, which he has bought in smaller amounts from brokers or dealers. Now, when the ticket reaches him, as it will from the issuer of the ticket, an apparent difficulty confronts him—how is he to pass the ticket to those who have purchased the shares of him in smaller quantities? The difficulty he surmounts by splitting the ticket. He keeps the original ticket in his possession, and issues a number of tickets, the payer and the price on each is the same, but the amount has been split up. As this process may result in a small loss to the issuer on securities deliverable by deed of transfer, the rule provides that a member splitting a ticket shall pay the increased expense caused by such splitting. This extra expense is occasioned by extra transfer fees and by stamps. A member who fails to keep the original ticket will be required to trace it in case of selling out.



On each split ticket the member splitting it is required to associate "split by" with his name.

Split tickets must bear the name of the issuer of the original ticket and must state by whom the ticket is split. With reference to claims on split tickets, claims for loss on split tickets will not be deemed valid unless made by the original claimant within three months after the date of the ticket, but the member splitting the ticket shall be liable to intermediate claimants for a period of four months. But the liability of members to the Settlement Departments in respect of losses on split tickets collected by them shall be for a period for six months from the date of the ticket. The custom of splitting tickets is a reasonable one, and has been judicially recognized (*Bowering v. Shepherd* (1871), 6 Q.B.D., 309).

A member who makes an alteration in or improperly detains a ticket must make good any loss that may occur thereby. The deliverer shall cause the securities to be transferred at the price marked upon the ticket, but no member is compelled to take a ticket at a price not current in the market during the account unless the bargain represented by such ticket has been made within the two preceding accounts.

With reference to bearer securities, tickets must not be split except in the Settling Department. It should be noticed that somewhat different rules apply to the splitting of securities passing by delivery or bearer securities, as they are termed.

Some reference has already been made to the Settlement Department or Stock Exchange Clearing House. It is now proposed to describe the ingenious mechanism by which the multifarious transactions of the settlement are simplified, and much unnecessary labour undoubtedly saved.

Members who belong to the Settling Department on the first day of the settlement send in lists of the stocks which they have to deliver to or take from other members belonging to the Clearing House. This is called the Settlement Department list.

On p. 239 is shown a specimen of a Settlement Department List.

In this list the names of the members to whom securities have been sold appear on one side, and on the other side the names of members from whom securities have been bought; the amounts of the securities bought or sold appear in their respective columns, marked thousands, hundreds, tens, and units. As a rule, it will appear that the list

## SETTLEMENT DEPARTMENT LIST

*Date, August, 19..*

Name of Stock

Name of Member

[illegible]



shows a balance one way or the other. The firm sending in to the Clearing Department may make to take, for instance, a balance of securities from the Department. The clerks of the Department make a "trace" from the taker of shares to the deliverer, keeping a record of each member's name through whom the trace goes. Any deliverer on the Ticket Day can claim the right to deliver to and demand payment from his immediate neighbour on the trace.

With reference to these transactions, differences are all paid by cheques on bankers belonging to the Bankers' Clearing House. It will be seen that the Clearing House has no concern with the actual stocks or with money payments; its only business is with balance sheets and tickets. These show the result of the balances, and the person who is found to be the person required to deliver stock is given a ticket showing the separate amounts of the stock into which his balance has been divided and stating the person or persons to whom delivery of the balance must be made. Delivery and payment are, therefore, practically simultaneous operations.

By the system adopted of passing tickets by the aid of the Clearing House, it will now be seen that the main object aimed at is obtained, that is to say, the real buyer and the real seller are brought together.

The seller of securities deliverable by deed of transfer is responsible for the genuineness and regularity of all documents delivered, and when an official certificate of registration of such securities has been issued the Committee will not, unless bad faith is alleged against the seller, take cognizance of any subsequent dispute as to title until the legal issue has been decided, the reasonable expenses of which legal proceedings must be borne by the seller. Nor will they, except under special circumstances, interfere in any question arising from the delivery of securities by transfer in blank. The seller is responsible for such dividends as may be received unless an unreasonable time has been taken by the transferee to execute and lodge the documents for registration. (Rule 120 (3).)

It is the duty of the transferor of any share or interest in a Company to apply to the Company to register the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee. No notice of any trust expressed, implied, or constructive, may be entered

on the register or be receivable by the registrar in the case of Companies registered in England or Ireland. A transfer by a personal representative is good. (Sections 27, 28, and 29, Companies Consolidation Act, 1908.)

It is the transferee's duty to execute and lodge the documents for registration, and any undue delay on his part, as already stated, may discharge the seller for his responsibility for dividends.

It is obvious, however, that unless tickets are promptly passed considerable difficulties may arise. Hence the necessity has arisen for elaborate precautions to prevent confusion and delay. In fact, the mere delivery of the ticket may be the first point at which a breach of the contract may occur. This breach, however, has no connection with any subsequent breach which may happen at a later stage, either from non-payment of the purchase-money or from a failure to deliver the securities purchased. In passing tickets, since they may go through many hands, it is important that the price and time should be marked on which the ticket is received, and therefore attention must be directed to the very important rules on this subject dealing with registered securities.

(a) A member receiving a ticket relative to a security deliverable by deed of transfer from the issuer after three o'clock on the Ticket Day, must note the fact on the back of the ticket. (b) For securities which are subject to arrangement by the Settling Department: a member receiving a ticket after two o'clock on the Intermediate Day, or at any time on any subsequent day, must note the date and exact time at which the ticket is received; (c) for securities which are not subject to arrangement by the Settlement Department, a member receiving a ticket after six o'clock on the Ticket Day or at any time on any subsequent day, must mark the date and exact time at which such ticket is received. Members omitting to note the times thus fixed may become liable for losses occasioned by selling out. Rule 122 (7). The deliverer may, previous to delivery, pay any call made on registered securities although not due, and claim the amount of the issuer of the ticket. (Rule 127.) The buyer of securities must pay the stamp duty and also the transfer registration fee in cases where it has been paid in advance by the seller. In the case of a loan the borrower must pay the nominal consideration stamp, the registration fee, and the mortgage stamp. A dealer who requires a transfer to himself or his nominee under the



provisions of Section 42 of the Finance Act, 1920, must issue a numbered ticket bearing a certificate in the following terms signed by the dealer—

“ Delivery on a ten shilling stamp under the Finance Act, 1920, Section 42.

I (we) certify that the purchase referred to in this ticket was effected by me (us) in the ordinary course of my (our) business as a dealer(s) on the Stock Exchange.”

Any split ticket must bear a copy of the certificate.

The transfer, when delivered, must bear the ten shilling stamp and either the supplementary stamp required by the Act or a signed endorsement by the delivering broker to the following effect—

“ I (we) hereby declare that these transfers were delivered by me (us) to . . .  
on the

(Signed)

Members of the Stock Exchange.”

The buyer of securities may refuse to pay for a transfer deed unaccompanied by the certificate, unless it be officially certified that the certificate is at the office of the Company. But if the transfer deed be perfect in all other respects the securities must not be bought-in until reasonable time has been allowed to the seller to obtain the certification required. If the seller have a larger certificate than the amount of stock conveyed, or only one certificate representing stock conveyed by two or more transfer deeds, the certificate may be deposited with the secretary of the Share and Loan Department of the Stock Exchange who must forward it to the office of the Company, and certify to that effect on the transfer deeds which shall then be a valid delivery. No person is to look to the trustees and managers or Committee of the Stock Exchange as being liable for the due and accurate performance of those duties, the trustees and managers and Committee holding themselves and being held entirely irresponsible in respect of the execution or of any mis-execution or non-execution of the duties in question.

On the morning of the Account Day all unsettled bargains must be brought down and temporarily adjusted at the making-up price of the Contango Day.

(1) A member is not required to pay for securities presented after

a quarter before two o'clock or after twelve o'clock on Saturday. (2) If a deliverer elects to settle with his immediate buyer under the provisions of Rule 106 (which entitle a seller to demand payment for securities from his buyer ; that is to say, he has the right to demand payment for securities from the member who passed him the ticket, and if he applies to the holder of the ticket and fails to obtain payment or receives a cheque which is dishonoured, the member from whom he received the ticket must make immediate payment), he must deliver his securities before half-past twelve o'clock or eleven o'clock on Saturday, but intermediaries on the trace are bound to pay their sellers up to one o'clock or half-past eleven on Saturday. (Rule 131.)

When there has been a declaration of a dividend, in respect of which the transfer books are closed at the date of delivery, the buyer is entitled to deduct this when paying for securities. In cases where dividends are declared payable in a foreign currency, the secretary of the Share and Loan Department shall fix a price for the dividend in sterling money which shall be posted in the Stock Exchange, and the dividend shall be accounted for at such price. (Rule 133.)

All tickets representing securities which at the time are subject to arrangement by the Settlement Department, and all tickets representing securities dealt in in the Mining Market or in the Rubber Section of the Miscellaneous Market which are included in the "Stock Exchange Official List of Making-up Prices," shall be passed through the accounts at the making-up price of the Contango Day, and the securities paid for at that price, but the consideration money in the deed must be at the price on the ticket.

It may be noticed that in making out the transfer of the shares, a duty which is cast upon the deliverer or seller of the shares, there may, by reason of sub or intermediate sales, be a variation between the price for which the shares were originally sold by the vendor, and the price which the ultimate purchaser or the issuer of the ticket pays for them. Thus, if A, the seller of the shares, sells them for £245 to B, and B sells to C, and C to D, who is the ultimate purchaser for £250, B and C have both sold at increased prices. A might say that the price that he sold at was £245 and not £250, and object to a transfer which stated the consideration was £250. In the case of *Mewburn v. Eaton* (1869), 20 L. T., 449 a vendor actually



did raise this point. The Stamp Act, 1891, requires that the consideration paid by the ultimate purchaser shall be inserted as the consideration. In *Case v. McLellan* (1871), 20 *W. R.*, 113 a foot-note was added to the transfer deed to the effect that the consideration money differed from that which the first seller was to receive, owing to the sub-sale by the original buyer, and that it was so stated to comply with the Stamp Act. The Court construed this as part of the deed, serving as an acknowledgment of the money, and held that the deliverer was not entitled to object to the transfer. In accordance with a suggestion thrown out, the note appended to the transfer has now been amplified. (See form of deed of transfer.)

So far, securities deliverable by deed of transfer only have been discussed. It is, therefore, now necessary to deal with the case of securities passing by delivery and the special rules which regulate them.

#### SECURITIES PASSING BY DELIVERY

The seller is responsible for the genuineness of the securities delivered, and in case of his death, failure, or retirement from the Stock Exchange, such responsibility attaches to each member in succession through whose hands the securities or the ticket representing such securities shall have passed. The deliverer of securities on tickets is required to apportion such securities to each ticket at the time of delivery, and the taker of securities, in order to secure his right under this Rule (134), must keep such tickets and the number of the securities to which they were respectively apportioned, or in the case of Settlement Department tickets, the numbers of such tickets.

On the Ticket Day, between one and four o'clock, tickets must be passed at the making-up price of the Contango Day. They may not be issued later than three o'clock on the Ticket Day. These tickets must bear distinctive numbers and be for the following amounts, viz. £1,000 stock or multiples of £1,000 up to £5,000 or the equivalent in foreign currency : 5 shares, or multiples thereof up to 100. Tickets for £500 stock may be passed for bargains or balances of that amount. Smaller amounts must be settled without tickets. Tickets may not be split except in the Settlement Department and a member is required to endorse on the ticket the name of the member to whom it is passed. Sellers must accept tickets, but if a

deliverer elects to settle with his immediate buyer, and he may do so under Rule 106 (p. 243), he must deliver his securities before half-past twelve o'clock or eleven o'clock on Saturday. Intermediaries on the trace are bound to pay their sellers up to one o'clock, or half-past eleven on Saturday. The holder of a ticket who allows two business days, including the Account Day, to elapse without delivering the securities, releases his buyer from any loss in consequence of the declaration of any member as a defaulter.

Bargains in bonds and debentures include the accrued interest in the price, but there are certain exceptions. Thus British and Colonial Treasury and Exchequer Bonds or Bills, Rupee Paper, India railway debentures and certain securities of a like character, which are dealt in so that the accrued interest up to the day for which the bargain is done is paid by the buyer.

(1) Securities which are sold cum coupon must be delivered with the coupon unless they have been made ex coupon before or on the date for the completion of the bargain.

(2) Except as provided above, should a bond be sold cum coupon and be delivered without the coupon the seller must compensate the buyer by the payment of—

(a) In the case of coupons payable only in London, the value of the coupon, less income tax.

(b) In the case of coupons payable abroad or both in London and abroad, the market value of the coupon on the date for which the bargain is done without deduction of income tax. In case of dispute the Secretary of the Share and Loan Department will fix the market value. (Rule 139.)

It must be particularly noticed that no securities will be good delivery without the coupon before they are made ex coupon.

In the case where dividends are payable only abroad, the Secretary of the Share and Loan Department will fix a price for the dividends or coupons in sterling money, which will be posted in the Stock Exchange, and the dividend will be accounted for at such a price.

Eleven clear days between the day of delivery and that of the closing of the books will be allowed by the seller to the buyer of American shares in order to afford time for transmission of the certificates to offices at or East of Chicago.

A bond or certificate is to be considered perfect unless it be much torn or damaged or a material portion of the wording be obliterated.



The Committee will not take cognizance of any complaint in respect of a bond or certificate alleged to have been delivered in a damaged condition, or deficient in or with irregular coupons, if the bond or certificate is detained by the buyer more than eight days after the delivery, unless it can be proved that the member passing it was aware of its being imperfect.

A member cannot be required to accept delivery of American shares or registered bonds in names requiring legal or other documents to be attached in order to effect transfer. The Committee will not take cognizance of any complaint in respect of the irregularity in the endorsement of an American share certificate should such certificate be detained by the buyer more than three months after delivery, unless it can be proved that the member who passed it was aware of the irregularity. With reference to the delivery of a certificate of American shares, a member may not be required to accept the delivery of a certificate which represents a larger number than—

100 shares up to and including	\$5	each.
50    ,,                   ,,           ,,	\$25	each.
20    ,,                   ,,           ,,	\$50	each.
10    ,,           of any other denomination.		

nor an American bond of a larger amount than \$1,000. Smaller certificates or bonds must be of such denomination as to be deliverable in the above amounts.

On the Ticket Day between one and four o'clock, tickets are required to be passed at the making-up price of the Contango Day. They must not be issued later than three o'clock on the Ticket Day. A member may not be required to pay for securities presented after a quarter before two o'clock or after twelve o'clock on Saturday. On the Account Day the holder of a ticket must deliver before one o'clock. The buyer is required to pay for such portion of securities as may be delivered within the prescribed time.

#### BUYING-IN AND SELLING-OUT

A definition of the terms buying-in and selling-out has already been given (see Sect. 5). This business is effected by the officials of the Buying-in and Selling-out Department which is appointed by the Committee for general purposes. The officials of this

department trace the transaction to the responsible member and claim the difference from him. The charges for buying-in and selling-out are fixed and have already been stated under the Minimum Scale of Commissions. Full commission is charged on the first attempt and half commission on every subsequent attempt.

The Committee have power to suspend the buying-in of securities when circumstances appear to them to make such suspension desirable in the general interest, but the liability of intermediaries continues unless otherwise determined by the Committee.

Intermediaries, however, may be discharged from liability. For the issuer of a ticket who allows two business days from the buying-in day to elapse without buying-in or attempting to buy-in the securities, releases his seller from all liability in respect of the non-delivery of the securities unless he has waived his right to buy-in at the request or with the consent of his seller ; and the holder of the ticket will alone remain responsible to such issuer for the delivery of the securities. The liability of issuers and holders of tickets is not affected by the fact that intermediaries have been released by lapse of time.

In the case of Companies which prepare their own transfers the intermediate seller is released thirteen clear days after the earliest day on which a transfer can be procured. In the case of securities passing by delivery, a member who has allowed two business days to elapse without buying-in or attempting to buy them in, has released his seller from any loss in consequence of the declaration of any member as a defaulter, unless he has waived his right at the request or with the consent of his seller.

Intermediaries are also released, when the deliverer of securities deliverable by deed of transfer allows two business days from three o'clock on the Intermediate Day, the third day of the settlement, to elapse without availing himself of his right to sell-out. His buyer is then released from loss where the ticket has not been passed in consequence of the declaration of any member as a defaulter. If a seller does not deliver securities within two business days from the buying-in day, the intermediate buyer from whom he received the ticket is released and the issuer of the ticket alone remains responsible for the payment of the purchase money. (Rule 156.)

In *Allan v. Graves* (1870), *L.R.*, 5 *Q.B.*, 478, the facts were that



the plaintiff had through stockbrokers, G & G, entered into a contract with M, a jobber, for the sale of shares, as to 100 of which the defendant was a taker-in, and bound to deliver a ticket with a name to M, who, in his turn, was bound to deliver a similar ticket to G and B in the ordinary way, but the usual arrangement was departed from, and an informal ticket was issued by the defendant without any transferee's name, the plaintiff's brokers agreeing to dispense with this till required, thus waiving their rights to sell-out. The plaintiff's brokers, having prepaid certain calls on the shares, got him to sign transfers in blank. Soon after the settling day the defendant paid the plaintiff's brokers the purchase-money, and they settled with M. On the next Name Day the defendant passed the name of a foreigner, but with no address. The plaintiff's brokers declined to accept the name and returned the ticket on the ground of its being imperfect. The company stopping payment, the transfer was never registered, and, a call having been made on the plaintiff as a contributory, he sued the jobber and obtained judgment for the amount of the call and interest as damages for the breach. The Court thought that, although the transfer in blank put it in the defendant's power to fill up the blank with any name he pleased, it would be a great deal too much to assume from this that the brokers agreed to take without inquiry whatever name the defendant liked, even if the brokers could have bound the plaintiff by so unreasonable an agreement. Where the contract is made with the words "with registration guaranteed," it means that the jobber will either register himself, or will find a purchaser who will accept and register. Lord Hatherley, L.C., said, in a case in which the validity of this custom and practice was discussed, "it was reasonable that a custom and practice followed so long on the Stock Exchange should be recognized, and that such contracts should not be completed until the jobber had himself paid for the shares and registered the transfer, or had procured a purchaser to do so" (*Cruse v. Paine*, 1869, L. R., 4 Ch. 441).

Inscribed stock, which is not subject to an *ad valorem* stamp duty, which is bought for a specified day and is not then delivered, may be bought-in without notice on the following day at eleven o'clock, and the member causing the default must pay any loss incurred.

If securities deliverable by deed of transfer or inscribed stock, subject to an *ad valorem* stamp duty, are not delivered within

ten days, the issuer of the tickets may buy them in against the seller on the *tenth day* after the Account Day or any subsequent day. In the case of Companies preparing their own transfers, securities may be bought-in on the eleventh day after the earliest date on which a transfer can be procured or on any subsequent day. One hour's public notice of such buying-in must be posted in the Stock Exchange, except Saturday, when a notice of three-quarters of an hour only is necessary. The notice must be posted not later than half-past twelve o'clock on ordinary business days, except on Saturday, when it must be posted not later than half-past eleven o'clock.

The name into which the securities are to be transferred must be stated in the order to buy-in if required by the manager of the Buying-in and Selling-out Department. The loss occasioned by such buying-in must be borne by the ultimate seller unless he can prove that there has been undue delay in the passing of the ticket on the part of any member, who in that case becomes liable. Securities which are bought for any day except the Account Day and are not delivered by half-past two, or twelve o'clock on Saturday, may be bought-in on the following or any subsequent day without notice, and any loss occasioned by such buying-in must be borne by the seller. Securities bought-in and not delivered by one o'clock on the following day, or by twelve o'clock on Saturday, may be again bought-in for immediate delivery without further notice, and any loss must be paid by the member causing such further buying-in.

Securities passing by delivery bought for the Account Day which are not delivered by a quarter before two o'clock, may be bought-in on the following or any subsequent day, and any loss occasioned by such buying-in shall be borne by the seller.

One hour's public notice of such buying-in must be posted in the Stock Exchange, except on Saturday, when three-quarters of an hour's notice is all that is necessary. The notice must be posted not later than half-past twelve o'clock, or half-past eleven on Saturday.

If such securities are bought for any day except the Account Day and not delivered by a quarter before two o'clock, or by twelve o'clock on Saturday, they may be bought-in on the same or any subsequent day without notice, and any loss occasioned by such buying-in must be borne by the seller.



Buying-in takes place between half-past one and three o'clock, and on Saturdays, between a quarter-past twelve and one o'clock.

The loss occasioned by such buying-in must be borne by the member who has failed to deliver the securities by a quarter before two o'clock on the previous day, or by twelve o'clock on Saturday. Securities which are bought and not delivered by one o'clock on the following day, or by twelve o'clock on Saturday, may be again bought-in for immediate delivery without further notice, and any loss must be paid by the member causing such further buying-in.

It not infrequently happens that the official of the Buying-in and Selling-out Department is unable to execute an order to buy-in. In that event the notice of such buying-in must remain on the General Notice Board, and the official, so long as the order remains in force, must daily renew the attempt to buy in, and when so instructed must bid for the stock. A holder of a ticket must, before eleven o'clock on the buying-in day, notify the payer that he holds it. In the case of selling-out inscribed stock for a specified day, the seller of such stock who has not received a ticket by half-past twelve o'clock, or a quarter-past twelve o'clock on Saturday, may sell out against the buyer. If such ticket has not been regularly issued before eleven o'clock, the issuer thereof is responsible for any loss occasioned by the selling-out. Should the ticket have been regularly put in circulation the holder at half-past twelve o'clock, or a quarter-past twelve o'clock, becomes liable.

The rules relating to the selling-out of registered securities, that is to say, securities deliverable by deed of transfer, are as follows—

If the deliverer does not receive a ticket by half-past two o'clock on the intermediate day, the third day of the settlement, he may sell out such securities up to three o'clock, or one o'clock on Saturday, on that day or any subsequent day. In the case of a bargain for a specified date, the deliverer who does not receive a ticket by half-past two, or half-past twelve on Saturday, on the day before such specified date, may sell out the securities up to three o'clock, or one o'clock on Saturdays, on that day or any subsequent day. If the security is one of those undertaken by the Settlement Department, written notice stating for whom a ticket is required must be given to the Department at least one hour before such selling-out, and in no case may such securities be sold out before twelve o'clock. If a ticket has not been regularly issued before three o'clock on the

Ticket Day the issuer becomes responsible for any loss occasioned by selling-out. Should it have been regularly put into circulation, the holder of it at the following times becomes responsible for selling-out, unless he can prove undue delay in the passing of the ticket—

(a) For selling-out on the Intermediate Day the holder of the ticket at two o'clock on that day.

(b) For selling-out on the Account Day

(1) Of securities which are subject to arrangement by the Settlement Department at three o'clock on the Intermediate Day, unless such ticket was in the Settlement Department at three o'clock, in which case the holder at five o'clock becomes liable. (2) Of securities not subject to arrangement by the Settlement Department the holder of the ticket at twelve o'clock on the Intermediate Day.

(c) For selling-out on any day after the Account Day—the holder of the ticket at three o'clock on the previous day or one o'clock on Saturday.

The release of intermediaries takes place in the case of securities deliverable by deed of transfer, when the deliverer allows two business days from three o'clock on the Intermediate Day to elapse without availing himself of his right to sell-out. His buyer is then relieved from all loss in cases where the ticket has not been passed in consequence of the declaration of any member as a defaulter. If a seller fails to deliver securities within two business days from the buying-in day, the intermediate buyer from whom he received the ticket is released, and the issuer of the ticket alone remains responsible for the payment of the purchase money.

Where securities are sold out, if a ticket is not given within half-an-hour after the time of sale, the transfer may be made into the name of the buyer. A member who has sold bearer securities for a specified day may sell-out the same on that day, and if the buyer is not prepared to pay for them by a quarter before two o'clock, or twelve o'clock on Saturday, he will then become liable for any loss incurred.

#### GOVERNMENT AND CORPORATION INSCRIBED OR REGISTERED STOCKS

The rules relating to Government and Corporation inscribed or registered stocks are as follows—



Stock receipts must be delivered by half-past two o'clock, or on Saturdays by half-past twelve.

If a deliverer elects under Rule 106 (which is the rule which enables a seller to demand payment from the member who passed him the ticket) to deliver a stock receipt to the member with whom he has dealt, he must deliver such receipt by a quarter-past two o'clock, or a quarter-past twelve on Saturdays. British Government securities transferable by deed, and British and India Government and Corporation securities to bearer, must be delivered before a quarter-past two o'clock or before twelve o'clock on Saturday. The seller of Bank stock must pay the transfer fee, and the buyer may require as many transfers as there are even thousand pounds stock in the sum dealt in. Bargains in Exchequer Bonds and in stock certificates are for bonds and stock certificates not filled up to order. A buyer of British Government stock is entitled to delivery of inscribed stock unless otherwise arranged.

#### EX-DIVIDEND

Government and Corporation securities, inscribed registered scrip, certificates or bonds, are made ex-dividend on the day after that on which the books close for the payment of the dividend, except Victory Bonds, which are made ex-dividend ten days prior to the payment of the dividend. Securities deliverable by deed of transfer, except securities dealt in in the Mining Markets, and the Oil, Tea and Coffee, and Rubber sections of the Miscellaneous Market, and Registered Debentures, are made ex-dividend on the Account Day following the date on which the dividend may have been declared, provided the transfer books have already been closed for the payment of the dividend. If the transfer books are not closed until after the declaration of the dividend, the securities shall be made ex-dividend on the Account Day following the closing of the books. Securities which are dealt in in the mining markets, and the oil, tea and coffee, and rubber sections of the Miscellaneous Markets, are made ex-dividend on the Account Day following the payment of the dividend. Securities to bearer and registered debentures are made ex-dividend on the day when the dividend is payable, but securities to bearer with coupons payable only abroad may be made ex-dividend on the Account Day which shall allow the necessary time for the transmission of the coupon for collection.

American shares, other than shares dealt in in the mining markets, are made ex-dividend on the Account Day preceding the closing of the books for the payment of the dividend if not more than six days intervene, otherwise on the Account Day following the closing of the books.

It should be noted that in the settlement of all bargains, except those coming under the provisions of Rules 139 (2) (see Appendix), dividends are to be accounted for at the net amount receivable after deduction of the income tax. Accrued interest on securities, excepted on Rule 138 (see Appendix), must be paid without deduction of income tax.

### DRAWN SECURITIES

Bargains must be settled in securities which have not been drawn. In case of the erroneous delivery of any drawn securities the buyer, on receipt of undrawn securities and on allowance being made for any drawing or dividend of which he may have lost the benefit, must deliver such securities back to the person who held them at the time of the drawing, or must pay to him any proceeds received from such drawing provided the said securities, or the proceeds thereof, be traced to and remain in the possession and under the control of the buyer, all intermediate members being released from liability. The Committee will not entertain a claim by the seller in respect of the erroneous delivery of drawn securities unless it is made within nine calendar months from the day of delivery. In the case of securities bought before but delivered on or after the date of the drawing, the seller must pay to the buyer the market value of the drawing. In case of dispute, this is determined by the Secretary of the Share and Loan Department.

### RIGHTS

A buyer is entitled to new securities issued in right of old, but he must specially claim the same in writing from the seller not later than four o'clock or one o'clock on Saturday on the day preceding the latest day fixed for the receipt of applications in London. Notwithstanding the provisions of the above clause, the seller, if he is in possession of the new securities, is responsible to his buyer for the same, although claimed by him later than four o'clock on the above named day, and should he not be in possession of the



new securities he is bound to render every assistance to the buyer in tracing the same. Claims for rights are claims for the new securities issued in right of old, but when practicable are to be settled by Letters of Renunciation.

Claims for Renunciation Letters are invalid.

A member cannot be required to accept Letters of Renunciation after two o'clock, or twelve o'clock on Saturday, on the latest day fixed for the receipt of applications in London. Where Letters of Renunciation are not issued all payments as and when required by the Company are to be advanced to the seller by the buyer who may demand a receipt for the same, such payments being for securities to be delivered at the account fixed in accordance with Rule 160 (see Appendix).

If the new securities cannot be obtained by Letters of Renunciation the Secretary of the Share and Loan Department, subject to the approval of the chairman or deputy chairman or two members of the Committee, fixes a price at which the new securities may be temporarily settled, which may be deducted by the buyer from the purchase money of the old securities until the account is fixed in accordance with Rule 160.

(1) When securities on which options are given are made "Ex Rights," an official price will, on application to the Secretary of the Share and Loan Department, be fixed for the Rights.

(2) All Rights in respect of options must be settled by the allowance of such valuation in the option price, unless the member who has given for the call or taken for the put, gives notice in writing on or before the day the securities are made "Ex Rights" that he will claim the new securities, and accept delivery if the option is exercised.

## CHAPTER XIII

### THE POSITION OF THE SELLER AND BUYER PRIOR TO THE EXECUTION OF THE TRANSFER BY THE BUYER

By delivery of the share certificates and the transfer, the vendor has done all that it is incumbent upon him to do. No responsibility rests upon him to see that the buyer's name is registered in the books of the company. This obligation falls upon the buyer. The instrument of transfer is, according to Stock Exchange custom, prepared by the seller's broker. No claim arises at law for the payment of the purchase-money till the deed of transfer has been tendered to the purchaser unless it be accompanied by a certificate, or unless it be officially stated that the certificate is at the office of the company (*Stephens v. De Medina*, (1843), 4 Q.B., 422; *Bowlby v. Bell*, (1846), 3 C.B., 284; *Franklyn v. Lamond* (1847), 4 C.B., 637). A certificate under the common seal of a company specifying any shares or stock held by any member is prima facie evidence of the title of the members to the shares or stock (Sect. 23, Companies Consolidation Act, 1908). The Share and Loan Department carries out the bulk of the business on the Stock Exchange. The procedure has already been set out. A certificate for this purpose may be given by a company, and in cases where a company carries out its own transfer a certificate is generally in the form "certificate lodged," written on the side of the deed, signed by the Secretary of the company. The origin of the practice of certification was explained by Lindley, L.J., in *Bishop v. The Balkis Consolidated Co.* (1890), 25 Q.B.D., 512, at p. 519. He said: "The practice of giving 'certifications' has arisen from the difficulty felt by members of the Stock Exchange in settling their accounts as buyers and sellers of shares where the seller's certificate of title does not accompany his transfer. If the seller's certificate includes more shares than he sells, he does not deliver it to the buyer with the transfer, but the seller produces his certificate and the transfer to an officer of the company, and he 'certificates' the transfer; and buyers and their brokers act on the faith of this 'certification,' just as they would if the certificate produced to the company had been produced to and lodged with themselves. No fee is paid for a 'certification.'



In every case the 'certification' must be read in connection with the transfer on which it is put. The object of the 'certification' is to enable the transferor to satisfy his transferee that he, the transferor, can make a good title to the shares mentioned in the transfer. This he can only do if he is himself the registered owner of the shares mentioned in the transfer, or if he has a transfer from the registered owner to himself, or to someone through whom he claims by a transfer or a series of transfers. The 'certification' therefore, to be of any use at all, must amount to a representation that the transferor has produced to the person certifying such documents as on the face of them show a *prima facie* title in the transferor to transfer the shares mentioned in the transfer; or, in other words, that the transferor has produced to the person certifying either what purports to be a certificate of the title of the transferor to the shares mentioned in the transfer or the equivalent of such a document, in other words, what purports to be a certificate of the title of someone else to these shares, and one or more documents purporting to transfer those shares from such person to the transferor. . . . Certification means no more nor can it reasonably be supposed to mean more. The certification is made by the Secretary or some other officer, who has no time to do more than look at the documents produced to him. If, in business language, they are 'in order,' i.e. if they are right on the face of them, he certifies; if they are not, he refuses to certify. But he has no means of ascertaining and no time to inquire whether the documents produced to him are genuine or not, nor whether the various transfers are valid or invalid in point of law. He acts on what he sees, and there is no pretence for saying that he does more or is understood by business men to do more. He does not warrant the title of the transferor, nor the validity in point of law of the various documents which establish his title. That this is the true view of the effect of a certification will be apparent, if it is remembered that certifications are sometimes made by an official of the Stock Exchange and not by any officer of the company, the shares in which are the subject of transfer." The practice alluded to by Lindley, L. J., will be found in the Stock Exchange rule 129 (2) which provides that if the seller has a larger certificate than the amount of stock conveyed, or only one certificate representing stock conveyed by two or more transfer deeds, the certificate may be deposited with the

Secretary of the Share and Loan Department of the Stock Exchange, who will forward it to the office of the company and certify to the effect on the transfer deed. This is then good delivery, but neither the Manager nor Committee of the Stock Exchange render themselves liable for the due or accurate performance of these duties. The Manager and Committee hold themselves irresponsible in respect of the execution or of the mis-execution or non-execution of these duties.

Before, however, tendering a transfer or delivering certificates to the purchaser, the selling broker has a reasonable time afforded him to consider whether he will execute the transfer and deliver the certificates or not. This is conceded in order to give the selling broker time to obtain the signature or signatures of the seller or sellers, for he or they may be abroad or in different places ; also time is required to obtain certification, and a reasonable allowance has accordingly to be made for the necessary delay which is likely to ensue. Time is also said to be conceded to the selling broker for the purpose of enabling him to object to the name of the proposed transferee submitted to him, and to ask for another name in substitution. The reason why time should be conceded will be better understood when the nature of the Stock Exchange transaction is realized. As a matter of practice, it is rare to find transfers made out in the name of the original contractor. Thus, to give an illustration—

A, a broker, on behalf of a principal, will sell to C, a jobber. The jobber does not complete the contract by taking the shares into his own name, although, of course, he may do so, but according to Stock Exchange custom he may complete the contract if he nominates someone who is competent and willing to accept the transfer. Therefore it follows that he must be either the transferee himself or must supply a purchaser, who is willing to be the transferee. The seller is in most cases unaware of the proposed transferee's position in life, and therefore is allowed a period of ten days for the purpose of making inquiries (*Nickalls v. Merry*, L. R., 7 H. L. 530 ; 45 L. J., Ch. 575). It will be seen that the transaction opens up some legal questions which may be of considerable importance : (1) *The validity of the custom and its effect* ; (2) *the extent of the seller's right to object to the proposed transferee* ; (3) *the extent of the liability of the jobber as the original contractor, with whom the seller made the bargain.*



I. *As to the validity of the custom and its effect.* The custom has been held to be valid in *Coles v. Bristowe* (1868), *L. R.*, 4 *Ch.* 3; 38 *L. J.*, *Ch.* 81, 19 *L. T.*, 403. There on the same day jobbers had given the vendors' brokers the names of seventeen persons as ultimate purchasers of shares, the shares to be transferred in different parcels, the brokers to the vendors having prepared seventeen deeds of transfer, procured their execution by the vendors, and on settling day delivered them and the share certificates to the jobber who paid the price agreed upon by the seventeen transferees, who, through their brokers paid the purchase-money to the jobbers and received but did not execute the deeds of transfer. The vendors subsequently having to pay calls sued the jobbers. The jobbers were held not liable as they had completed their contract according to the custom.

The Lord Chancellor said (after commenting on the nature of the evidence called as to the Stock Exchange custom): "According to this, the contract of the jobber is that at settling day he will either take the shares himself, in which case he would, of course, be bound to accept and register a transfer and to indemnify, or he will give the name or names of one or more transferees, to which no reasonable objection can be made, who will accept and pay for the shares. The jobber may perform either alternative; and if, electing to perform the latter alternative, he sends in names which are accepted, and to which transfers are executed, and these transfers are taken and paid for by the transferees or their brokers, the jobber is then and at that stage relieved from further liability, and the liability to register and indemnify is shifted to the transferees."

In *Grissell v. Bristowe* (1868), *L. R.*, 4 *C. P.*, 37; 38 *L. J.*, *C. P.*, 10; 19 *L. T.*, 390, the same usage was held reasonable. In *Maxted v. Paine* (second action (1871), *L. R.*, 6 *Ex.* 132), the usage was again approved, and in the absence of fraud held reasonable. It was finally approved in the case of *Nickalls v. Merry* in the House of Lords (*L. R.*, 7 *H. L.*, 530, 45 *L. J.*, *Ch.* 575).

The usage or custom being a reasonable one, what is the effect of it? Does it create a novation or not?

"Novation, as I understand it, means this," said Lord Selborne, *L.C.* (*Scarfe v. Jardine* (1882), 7 *App. Cas.*, 351); "the term being derived from the civil law that there being a contract in existence,

some new contract is substituted for it, either between the same parties (for that might be) or between different parties, the consideration mutually being the discharge of the old contract." In *Maxted v. Paine* (second action, *L. R. 6 Exch.* 132, 173), Blackburn, J., said : "*Coles v. Bristowe* and *Grissell v. Bristowe* seem to me to determine that when the transfers have been delivered to the issuing member and the price is fully paid, there is a novation which frees the member who merely passed the ticket from further liability, and *Coles v. Bristowe* further determines that this novation does not arise from the voluntary act of the seller in accepting the substituted liability of a third party in accord and satisfaction of the contract." *Coles* had in that case taken alarm and given his broker instructions to complete the contract with *Bristowe* direct, and not to recognize any sub-purchasers except as nominees of *Bristowe*. The evidence on the subject will be found at p. 151 of *Coles v. Bristowe* in *Law Rep.* 6 *Eq.* At p. 14 of the report of the case on appeal, in *Law Rep.* 4 *Ch.*, Lord Cairns deals with this as an ineffectual attempt to vary a contract already made. The case therefore decides that it is part of the contract for a sale for the account that where the price has been paid and the transfers executed to the nominees of the member who issues the ticket, and the transfers have been delivered to the member who issues the ticket, the member passing the ticket is free from responsibility. That decision and the decision of the Exchequer Chamber in *Grissell v. Bristowe* conclude the question so far except in the House of Lords. "We, sitting in a Court of co-ordinate jurisdiction, must hold that there is a novation, and it only remains open to consider what that novation is, and subject to what conditions. . . ." "It will be seen," continued Mr. Justice Blackburn, "that in my opinion the effect of the usage is that the member issuing the ticket is much in the position of one who has issued to his immediate contractor a promissory note promising to perform to the assignee of that promissory note those duties which he would otherwise have had to perform to that immediate contractor. If there were no custom, the person continuing to take shares would promise to accept from his vendor a transfer, and to indemnify against future calls. The contract on the Stock Exchange for the account is to supply him on the name day with a ticket, which he may either hold or pass on. Each member through whose hands the ticket passes is in a position analogous to the indorsee of that note, and the ultimate



assignee who is actually to deliver the shares is in a position analogous to the holder of that note, and I think that the effect of the custom is that unless what resembles notice of the dishonour of this note is given within fifteen days the intermediate indorsees of the ticket are released and then, and not till then, there is a novation, in my opinion, between the two members of the Stock Exchange, who are in the position of holders of that ticket and issuer of it." (See also *Hodgkinson v. Kelly* (1868), *L.R.*, 6 *Eq.*, 496, 37 *L.J.*, *Ch.* 837). There being a novation then between the two members of the Stock Exchange, since they are by law, agents for their principals, they create the same contractual relationship between their principals.

Whether this is the correct view may be doubted, for Lord Justice Mellish in *Nickalls v. Merry* (*L. R.*, 7 *Ch.*, 755), says: "The ticket is issued by the purchaser's broker, and it appears to me the broker who issues that ticket professes to be the agent of the man whose name is on the ticket. I cannot agree with Mr. Justice Blackburn that he offers to make a contract on his own account. It appears to me that what he does is this: He represents that the person whose name is on the ticket is his principal; that he has authority to bind him; that he is a person capable of accepting the shares, and that he, the broker, has authority to accept the transfer on his account so as to bind him."

II. *The second question to be considered is the extent of the seller's right to object.*

It has been indicated already that the seller has a reasonable time to object to a name submitted to him. The right to object, however, is a limited one, and is probably confined to the incapacity of the proposed transferee.

III. *The extent of the liability of the jobber or original contractor.*

Nevertheless, although no objection has been taken, the jobber or contractor has not completed his contract by submitting any name, for he must submit the name of a person who is competent to perform the contract, and if he does not, he will remain liable. Thus, where shares had been sold by a broker to a member of the Stock Exchange, a jobber, and on the settling day the jobber passed the name of an infant as the buyer without objection being made, the infant paying the price of the shares and the seller executing

the transfer, the jobber, two years afterwards, on the facts being discovered, the transfer never having been registered, was held to be still liable, since he had not passed the name of a person competent to buy. So again where a broker passed the name of a person who had in fact given him no authority, although he believed that he had (*Maxted v. Paine*, 1st case, *L.R.*, 4 *Ex.* 81). Other persons not competent would be foreigners resident out of the jurisdiction (*Allen v. Graves* (1870), *L.R.*, 5 *Q.B.*, 478, 39 *L. J.*, *Q.B.*, 157), illegal companies (*Joseph v. Pebrer* (1825), 3 *B & C*, 639), companies purchasers of their own shares (*London, Hamburg and Continental Exchange Bank ; Zulueta's claim*, (1870), *L. R.*, 5 *Ch.* 444 ; *Trevor v. Whitworth* (1887), 12 *A. C.*, 409). In fact it is a reasonable precaution to take, whenever the name of a company is passed as the deliverer of partly-paid shares, to find out whether such company is empowered to hold shares in another company (*re Contract Corporation* (1867), *L. R.*, 2 *Ch.* 95). The name of a lunatic would not be a good name (see *Maxted v. Paine* (1869), 21 *L. T.*, 535 ; *Nickalls v. Eaton* (1870), 23 *L. T.*, 689 ; *Dent v. Nickalls* (1873), 29 *L. T.*, 536).

It will be seen that the jobber will remain liable for non-fulfilment of his contract in passing the name of a person who is not competent to contract as in the instances cited above, but this is only the case when the transfer is not executed by the transferee. Where the transfer is executed he would no longer be liable even though the transferee subsequently turned out to be a hopelessly impecunious person (*Maxted v. Paine*, 2nd case (1871), *L. R.*, 6 *Ex.* 132).

The remedies of a seller against parties other than the jobbers where a transferee refuses or neglects to have his name registered or the company decline to place him on the register, are as follows : against his own broker, where the broker has neglected to make inquiries as to the solvency of the name submitted (*Maxted v. Paine* (1871), *L. R.*, 6 *Ex.* 132 ; *Evans v. Wood* (1867), *L. R.*, 5 *Eq.* 9 ; *Castellan v. Hobson* (1870), 10 *Eq.* 47), in which case an action would lie for negligence in not instituting proper inquiries. In other cases it would lie against the real purchaser where a man of straw as nominee had been put forward, as in *Castellan v. Hobson* (1870), *L.R.*, 10 *Eq.* 47). In that case the plaintiff had sold, through his broker, shares at a discount to jobbers, and the defendant, through his brokers, had purchased them. The defendant instructed his



brokers to give the name of one of his workmen, Banks, as the purchaser, which they accordingly did, but the workman's name was never registered owing to the subsequent stoppage of the company. On a bill being filed in equity praying for a declaration that the plaintiff should be declared a trustee of the shares for the defendant, Vice-Chancellor James said: "I think the Court would have found its way to say, if Castellan has a right to indemnity over from Banks, Banks has a right to indemnity over against Hobson, and it will pass over the intermediate man and make Hobson do that which he is bound to do. But the real answer is, that it is not a question of vendor and purchaser, it is not a question of specific performance at all: it is a question of trustee and *cestui que trust*. The result of the transaction is that Castellan remains the legal owner of the shares without any beneficial interest in them. As legal owner he has remained exposed to liabilities, and he is entitled to indemnity from the real equitable owner of the shares, for whom he was trustee. For whom then is he trustee? He is trustee for Hobson and not for Banks. Banks by the transaction has never acquired any legal or equitable right or interest whatever in these shares. He is a mere name. In truth, cases have frequently occurred in this Court in which what is called the intermediate trustee of a mere equity has been disregarded altogether. The cases are collected in Lewin on Trusts. Mr. Lewin says the intermediate trustee of a mere equity need not, except under special circumstances, be made a party, and quotes cases to support that proposition. That is to say, a man who has no property, who has no right to receive anything in respect of the shares, who has no powers of disposition over them, is a mere name. He may be an agent, he may be an attorney, but he is not the owner either as a trustee or in any sense whatever of the shares. Castellan, therefore, being the legal owner, and Hobson being the beneficial owner, and Banks being a mere name interposed between the two, Hobson, the real beneficial owner, the *cestui que trust* for whom Castellan is trustee, is bound to indemnify him against the calls which have been made."

The authority of this case, however, may now be doubted, and it is questionable how far it can be accepted as an authority since the decisions in *Coles v. Bristowe* (1868), *L. R.*, 4 *Ch.* 3, and *Maxted v. Paine* (second action) (*L. R.*, 4 *Ex.* 203, 6 *Ex.* 133), for it would appear

that the plaintiff's original contract of sale was liable to be extinguished by a new contract, which he agreed to enter into with a nominee, and that by executing the transfer to Banks and accepting him as a purchaser he did enter into such new contract, and it would seem to follow that he could look to him and to no one else for indemnity. The non-registration of the transfer would also seem to be immaterial according to more recent cases.

Both vendors and purchasers are entitled at law to obtain specific performance of their contracts, but the rule is subject to this limitation, that specific performance will only be decreed in securities which are not generally dealt in on the market. Where securities are freely dealt in on the market, since the buyer can repurchase and sue the vendor for damages for breach of contract, as there is no reason for ordering the contracts to be specifically performed, specific performance will not usually be decreed. It was long ago decided in the case of *Cuddee v. Rutter* (L. R., 1 Eq. 848), that an action for damages only would lie where the dealing had taken place in current securities, and that it was unnecessary to invoke the aid of the Court of Chancery to specifically enforce contracts for the sale of these.

Where, however, the contract is for the sale of non-current securities not usually dealt in, and which the purchaser would find a difficulty in obtaining, an action for specific performance of the contract will lie.

The right of a vendor to specific performance is greater than the right of a purchaser, for he is in a worse position, as, for instance, where he has sold shares for the express purpose of ridding himself of a liability on them for calls, for if the purchaser refuses to take this burden upon himself and complete the contract the vendor will be liable to pay the calls. Thus, an agreement has been enforced compelling a purchaser to accept a transfer of railway shares on which nothing had been paid as an agreement for a valuable consideration in consequence of the liabilities attaching thereto to which the purchaser was subjected, and from which the vendor would be released by the transfer (*Cheale v. Reiwald*, 3 De G. & J., 27). In *Duncuft v. Albrecht* (1841), 12 Sim, 189, 190, Vice-Chancellor Shadwell said: "There is not any sort of analogy between a quantity of £3 per cent stock or any other stock of that description, which is always to be had by any person who chooses to apply for



it in the market, and a certain number of railway shares of a particular description, which railway shares are limited in number and are not always to be had in the market."

Where specific performance is the proper remedy, it will be ordered notwithstanding that a transfer has not been executed (*Musgrave v. Hart*, L. R., 5 Eq. 194). There the application was made at the instance of Messrs. Musgrave, the registered holders of thirty shares in Overend, Gurney & Co., Limited, asking that the register of the Company might be rectified by registering James Hart as the owner of those shares in the place of the applicants. It appeared that the Articles of Association required that transfers of shares should be executed by both parties, and Hart had not executed the transfer, but had given the name of a servant, an insolvent person, as the purchaser; she also had not executed the transfer. The application failed because the transfer had not been executed by the transferee. Vice-Chancellor Malins expressed the opinion, however, that Messrs. Musgrave could have obtained a decree for specific performance of the contract against Hart.

Where directors of a company had a discretionary power of refusing to register a transfer, if they disapproved of the transferee, and a transfer which was executed before was not left for registration until after the commencement of the winding-up of the company, it was decided that in the absence of evidence that the transferee was objectionable it must be presumed that the directors would have registered the transfer (*Evans v. Wood*, (1867), L. R., 5 Eq., 9). In *Paine v. Hutchinson* (L. R., 3 Ch. App. 388), specific performance was ordered at the suit of the plaintiff's jobbers against the ultimate purchaser, who paid the purchase-money, but declined to have the shares registered on the ground that he had purchased them on another person's account, and never intended to have them registered in his name, nor authorized the giving his name as transferee, and that as the shares had been sold without any special guarantee that the transfer should be executed by the purchaser, he was not bound to have them registered. The Articles of Association of the Company gave the directors power to refuse to register a transferee if they considered him to be an irresponsible person. The defendant, however, did not answer this description, and the company was wound up afterwards.

V. C. Selwyn said: "The contract, it has been clearly proved,

would have been carried into execution, but for the simple circumstance that the present appellant (the defendant) refused to accept the transfer upon a ground which in our judgment he was not justified in taking, that is, that in the absence of what is called a special guarantee, although he was bound to pay the purchase-money, he was not bound to take a transfer. That we think is wholly groundless. The case of *Birmingham v. Sheridan* has been explained by the Master of the Rolls himself in the subsequent case of *Evans v. Wood* (1867), *L.R.*, 5 *Eq.*, where he says: 'I held, and I think rightly held, that where it was unfavourable for a person to be put upon the register, the contract could not be carried into execution, because part of the contract was that the name of the purchaser should be put upon the register, and that part could not be performed.' But this case differs from that for this reason, that the defendant, not from any intentional misconduct on his part, but owing to his accidental absence from home, did not send up the transfer to be registered before the 11th of May, which, if he had done, it would have arrived in time. I do not wish to use any harsh words, but certainly here the whole of the delay was occasioned by the contention on the part of the appellant in which we think he wholly fails."

Specific performance of the agreement was accordingly ordered.

In a winding-up, power is frequently given to company directors or liquidators to refuse registration, but this is no reason why the Court should not order it be done; since the contract between transferor and transferee is valid, and independent of registration, and in no way requires the consent of the directors to sanction it (*Robins v. Edwards*, (1867), 15 *W. R.*, 1065).

In the *Odessa Tramways Co. v. Mendel* (1878), *L. R.*, 8 *Ch.*, D. 235, a piecemeal agreement was ordered to be performed and the defendant was not allowed to set up a case of fraud for the purpose of making invalid the agreement, which was sought to be specifically enforced, as he had acted in collusion with the directors.

Specific performance, however, will not be granted where shares in a company which has never been formed are sold, since the shares are not in existence (*Kempson v. Saunders*, (1826), 4 *Bing.* 5).



## CHAPTER XIV

### TRANSFER

BEARER securities, as previously pointed out, pass by delivery. There are a large class of securities, however, which are transferable by entry or inscription in the books of the Bank of England, or of some other bank, where they were issued, or at the offices of the Agent-Generals of the Colonial Governments. These are Consols, India Stock, Colonial Government, Inscribed Stock, etc. The method by which a transfer is made at the Bank of England is by entry in a book expressly kept for that purpose. No actual certificate or document of title is issued to holders of these securities, but the names and amounts of their holdings are inscribed in a register kept for that purpose. The stocks are transferred free of charge on certain days, known as transfer days, which are days fixed by the Bank of England and other banks. If a transfer is made on other days a fee is charged.

The method by which Government securities or bank stock is transferred at the Bank of England is as follows—A printed ticket which can be obtained from the Bank is procured by the seller. This is called the transfer ticket. It is filled in by the purchaser's broker, and then transmitted to the seller. It shows on it the purchaser's name, the amount of the stock, and the purchase price. The ticket having been lodged at the Bank, the seller attends, and if he is not personally known there, his identity must be established at the Bank by a banker or a broker. The seller then signs the transfer, the transfer ticket being copied into a book which is kept expressly for this purpose. A stock receipt, which is a copy of the transfer in the books, is handed to the seller, who signs it as having received the consideration money. This receipt is delivered to the purchaser's broker or to the jobber and payment is made against it. The transferee is also recommended to sign the book, and thus accept the transfer. The seller pays the transfer fees (rule 117).

Should it be desired that the dividends be paid in some way other than by post to the first or sole stockholder, which is done without application, the necessary instructions must be lodged at once at the Bank.

The following is a copy of a Stock Receipt—

£2 10s. PER CENT CONSOLIDATED  
STOCK.

<i>Transfer</i> <i>Days.</i>	Received this      day of 19.., of      , hereinafter called the said transferee, the sum of , being the considera- tion for Interest or share on the capital of the two pounds ten shillings per centum Consolidated Stock form- ing part of the National Debt transferable at the Bank of Eng- land and all      property and interest in and right to the same, and the dividends thereon by , this day transferred to the said transferee.
Monday.	
Tuesday.	
Wednesday.	
Thursday.	
Friday.	
Holidays excepted.	

The proprie-  
tors, to protect  
themselves  
from fraud, are  
recommended  
to accept by  
themselves or  
their attorneys  
all transfers  
made to them.

Witness      Hand

Fresh instructions are not required upon an alteration in the amount of an existing account.

Notice to holders of £2 10s. per cent Consolidated Stock (Redeemable by Parliament on or after 5th April, 1923).

Dividends are due and payable on and after the 5th of January, 5th April, 5th July, and 5th October (unless any of these days fall on a Sunday or Bank Holiday, in which case they will be payable on the business day next following), and will be paid in one of the following modes—

(a) By transmission of the warrants through the post.

*Without application.* To sole or first stockholder in the absence of any instructions to the contrary. Sole stockholder includes sole



surviving stockholder, sole executor or administrator, and sole surviving executor or administrator. First stockholder includes the first executor.

*Upon application.* To any stockholder, executor, or administrator, other than the sole or first stockholder, executor, or administrator, or to any person, firm, or company, upon the written request, in the prescribed form, of all the stockholders, executors, or administrators.

(b) Dividends will be paid to any stockholder, executor, or administrator personally attending at the Bank, on his written request, in the case of a sole account, or on the written request of all the stockholders, executors, or administrators in the case of a joint account. The request in either case must be in the prescribed form.

Forms of postal request can be obtained at the Bank of England or at any of their branches or at any Money Order Office throughout the United Kingdom.

Postal dividend warrants will be issued, etc., and must therefore be presented for payment through a banker. The bank cannot undertake to cross a warrant payable to a banker with the account to which the dividend is to be placed; the stockholder must instruct the banker.

Persons who receive warrants by post should give notice to the bank if they are not received on the day on which they ought to be delivered, but need not acknowledge those that arrive in due course.

Forms of request for the receipt of dividends on personal attendance can be obtained on application at the Dividend Office, Bank of England.

Under the provisions of the National Debt Act stock and dividends unclaimed for ten years are transferred to the Commissioners for the reduction of the National Debt, but may be reclaimed by the persons entitled thereto.

Communications relative to £2 10s. per cent Consolidated Stock should be addressed, postage prepaid, to The Chief Accountant, Bank of England, London, E.C.2.

Stock certificates to bearer of the denominations of £100, £200, £500, and £1,000, with coupons for the quarterly dividends attached, may be obtained in exchange for inscribed stock.

The following is the practice of the Bank where a transfer is made by an attorney for the stockholder. A blank form of application for

a power of attorney is supplied to the Bank, and also to some of the largest firms of stockbrokers.

This form contains a space for the name of the stockholder, his present and past address, and also the name and address of the attorney, and the amount and description of the stock to be dealt in. The person applying for the form fills it up and lodges it at the Powers of Attorney office at the Bank. It is then compared by a clerk of the Bank with the Stock Book and Index Books wherein are found the amount of stock held by the stockholder, and his name and address. These books are kept at the transfer office. After the application form has been duly checked and seen to be in order, the power of attorney is filled up, and the stockholder receives a circular from the Bank telling him that an application has been received for a power of attorney to transfer stock, and that a reply is only necessary in the event of his objecting. The circular is addressed to the address of the stockholder as it appears in the books of the Bank. If the circular is not returned and no objection is made, the Bank then issues the power, which is taken then by the applicant for the purpose of execution by the stockholder. The stockholder's signature having been obtained, the power is taken again to the Bank and lodged in the Executed Powers' office. Comparison is then made with the ledger in which may appear any signatures of the stockholder's. The next step is to transmit the power to the transfer office, where it awaits the arrival of the transfer ticket. This is compared both with the power and the Stock Book, and, on being found to agree, is entered in the transfer, and the transfer is made out.

This ticket is in the following form—

This ticket is put forward by—————		A. B.
		Stockbroker.
Consols.		No.
Bank of England, the	day of	19..
£	£2 10s. per cent Consolidated Stock.	
To		
Examined by	On fol.	On fol. Transfer book.
Posted by		Posted by



The back of the power contains a form of demand to act upon such power. This the attorney signs, and he is then allowed by the Bank to execute the transfer. By sect. 30 of the Finance, 1917, a letter on power of attorney for the sale, transfer on acceptance of any of the Government or Parliamentary Stocks or funds are exempted from stamp duty. Notwithstanding the elaborate precautions which were taken to prevent fraud, an ingenious fraud was once perpetrated upon the Bank, which gave rise to a case ultimately taken to the House of Lords (*Starkey v. The Bank of England* (1903), A. C., 114, affirming *Oliver v. The Bank of England* (1902), 1 Ch., 610). In the latter case an amount of Consols and Bank Stock stood in the joint names of Edgar Oliver and W. F. Oliver, the latter being a solicitor who was in the habit of instructing a firm of stockbrokers in the course of his business. He instructed this firm to sell out the Consols and Bank Stock, and to remit him the proceeds. This they did, and applied in the usual way for a power of attorney to enable them to transfer it. Having received no reply to their circular, the Bank did not imagine that anything was wrong. They compared the signature of Edgar Oliver with a previous signature, and accordingly passed it as in order. The brokers having signed the demand for the power, the stock was transferred in pursuance of the power. It subsequently came to pass that Edgar Oliver discovered that his stock had been sold, and he sued the Bank. The Bank claimed to be indemnified by the brokers, who had signed the demand, and succeeded, the brokers being held liable to indemnify the Bank, who had been called upon to replace the amount.

The notice to holders already set out shows the method of payment of dividends. Government securities such as Consols are quoted ex-dividend about a month before the dividend is paid. Thus a buyer of Consols on December 10th would buy "ex-div.," and would not receive or be entitled to claim dividend paid on January 5th.

In addition to the stocks already mentioned, which are transferable at the Bank of England, there are some seventy others, including Indian Railway Stock and Chinese and Japanese Loans.

#### REGISTERED SECURITIES

With reference to securities deliverable by deed of transfer, the process of transfer is a little more complicated. It will be seen

that the buyer having purchased the stock or shares is entitled to be put into the legal possession of the stock or shares, and to effect this purpose in the first instance, where a deed is necessary, there must be a valid deed of transfer. Unlike the case of the transfer of real property where the purchaser prepares the conveyance, the vendor prepares the transfer at the expense of the purchaser at the price marked on the ticket, the purchaser being the ultimate buyer, who by means of the ticket has been brought in touch with the vendor.

By the Companies Clauses Consolidation Act (8 Vict. c. 16, s. 14) a transfer must be made by deed, but under sect. 22 of the Companies (Consolidation) Act, 1908, shares are transferred in the manner prescribed by the regulations of the company. These regulations may or may not require the transfer to be made by deed, and unless excluded or modified by special articles, they govern all companies limited by shares and formed under the Act. Therefore a company registered without special articles, or with articles adopting Table A in part, may subsequently exclude or alter the provisions of Table A and adopt special articles.

Under Table A which comprise the regulations for the management of a company limited by shares, unless otherwise provided, the instrument of transfer of any share in the company is required to be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the Register Book in respect thereof. By accepting the transfer, the transferee agrees to become a member, and is liable to be put upon the list of contributories, whilst the transferor becomes a past member, and after a year is released from liability. The form given in regulation 19 is as follows—

I, A B, of \_\_\_\_\_, in consideration of the sum of £  
 paid to me by C D, of \_\_\_\_\_ (hereinafter called the said  
 transferee), do hereby transfer to the said transferee the share  
 (or shares) numbered \_\_\_\_\_ standing in my name in the books  
 of the \_\_\_\_\_ Company, Limited, to hold unto the said  
 transferee his executors, administrators and assigns, subject to the  
 several conditions on which I held the same at the time of the



execution hereof, and I the said transferee do hereby agree to take the said share (or shares) subject to the conditions aforesaid.

As witness our hands the                      day of                      .

Witness to the signatures of, etc.

It is usual to have the signatures to all instruments of transfer attested by witnesses. When a transfer is executed out of Great Britain the signatures should be attested by some person holding a public position, such as a Notary Public, H.M. Consul, or a Vice-Consul, or a Magistrate.

There is nothing to prevent this transfer being carried out otherwise than by deed.

*Transfers in blank.*—A seller may, of course, sign a transfer in blank ; that is, he may leave blank spaces for the name of the transferee and for the purchase-money. The legal effect of this is as follows : (a) In companies where a deed of transfer is necessary, the transfer being incomplete, is void as a deed at law. Under the Companies Clauses Consolidation Act, 8 Vict. c. 16, s. 14, a deed is necessary, and therefore where a blank transfer is tendered in respect of shares in a company under this Act it is void, and inoperative. But under the Companies (Consolidation) Act of 1908 a deed is not an essential of a valid transfer, although it may be. In a case where a deed is necessary the purchaser is not entitled to fill in the blanks, nor can the deed be made operative by his so doing, unless it can be shown that it was re-delivered since the blanks were filled in in the presence of all the parties, or in their absence by their authority given under seal (*Powell v. London and Provincial Bank* (1893), 2 Ch. 555). A mere acknowledgment, for instance, by the transferor of the deed when the blanks are filled up, the deed not being in his possession or under his control, is insufficient (*Tramways Union Company v. Société Générale de Paris* (1885), 14 Q. B. D., 424). Nor will a deed be made perfect by registration so as to give a good title to the transferee (*France v. Clark* (1884), 26 Ch. D., 257).

On the other hand, where a deed is not necessary, nor formal writing, and there has been a blank transfer and delivery of the certificates, the buyer is entitled to fill up the blanks and register his security, or, if he chooses, to re-transfer the security.

It must, however, be noted that if the original bargain is good

the purchaser can enforce the contract, the seller being compelled to execute a proper transfer.

Companies usually require the production of the share certificates before permitting a transfer to be registered, although this is a matter of discretion. In the absence of fraud, the fact that the transferor's name is on the register is conclusive as to his title. Generally, however, companies take the precaution of advising the shareholder that a transfer has been lodged with them, and that they intend to register the transfer within a certain number of days unless they hear to the contrary from him. This, however, is not absolutely protective to the company, and they will be held liable if it should happen that the transfer is not in order (*Barton v. London and North-Western Railway Co.* (1889), 24 Q. B. D., 77).

It has been stated that blank transfers are occasionally used in loan transactions. When so used, the position of a mortgagee who holds such a transfer becomes a matter for consideration. Supposing that a mortgagee chooses to fill in the blanks, and obtain registration, and then transfers the security, what is the position of the transferee of the security as against the mortgagor? The mortgagee has apparently given a complete title, and if the transferee is a *bona fide* holder for value, and seeks to perfect his title by registration before receiving notice of the earlier equitable title of the mortgagor, he has obtained the right to have the security registered (*Roots v. Williamson* (1888), 38 Ch. D., 485; *Moore v. North-Western Bank* (1891), 2 Ch. 599). In other words, the mortgagor is estopped from denying against the innocent purchaser the title which he has acquired by reason of his, the mortgagor's, negligence.

A deposit, however, of share certificates accompanied by a blank transfer—the transfer as a transfer being inoperative—is evidence that the deposit of the certificates is intended to operate only as a security (*Colonial Bank v. Whinney* (1887), 11 App. Cas. 426, 343).

Supposing, however, that the transferee has received notice of the prior equitable title of the mortgagor, then the prior title prevails (*Nanney v. Morgan* (1887), 37 Ch. D., 346). Possibly, if the title of the transferee is practically complete and is completed by registration after notice, his title will prevail over that of the mortgagor (*Roots v. Williamson*, 38 Ch. D., 485; *Dadds v. Hill* (1865), 2 Hem. and M., 424).



In *Bentinck v. London Joint-Stock Bank* (1893), 2 Ch. 120, a plaintiff's brokers had advanced the plaintiff money on bonds and shares which they had purchased for him on the London Stock Exchange. The brokers having retained the bonds and shares as security (the security empowering them to transfer the securities to any bank for the purpose of raising money on them) transferred the bonds and shares to the London Joint-Stock Bank, together with securities belonging to other clients for an amount exceeding the amount that the plaintiff had borrowed. Some of the registered securities were transferred for full value to the bank by the brokers, others were transferred to a trustee for the bank for a nominal consideration only. The bearer securities were merely deposited. The bank claimed to retain the whole of the securities as against the whole loan. The plaintiff sought to redeem them on payment of the amount borrowed on his behalf. The plaintiff failed, the bank having taken them in good faith, the practice of broker's "taking in" being sufficiently general to warrant the bank in believing that the broker had authority to act in the way that he had done.

Where a blank transfer is passed by the holder of it to a third party, the third party so receiving it has constructive notice of the prior title of the signatory, for since the transfer is incomplete upon the face of it, he is put upon inquiry as to the title of the person from whom he received it. In *France v. Clark* (1884), 26 Ch. D. 257, a holder of shares in a company deposited the shares as security for a loan of £150, handing the mortgagee a signed transfer, but with the date, consideration, and name of the transferee in blank. The mortgagee subsequently mortgaged the shares as security in respect of a loan of £300, handing the transfer in blank to the sub-mortgagee. The sub-mortgagee, after the death of the mortgagee, completed the transfer, inserting, however, the amount of the sub-mortgage, namely, £300, as the consideration. It was decided that although the mortgage was for £300 as against the mortgagee, yet that he had no title, except in respect of £150, the original mortgage, since he necessarily had notice that the transfer was not in order when he received it, and as he made no inquiry, although he was put upon inquiry, he could have no more right than that which the mortgagor conferred upon the mortgagee. Apparently, however, there would have been an implied power to have inserted £150 as the

consideration money in order to have perfected the deed, and the securities might be held till the amount of the original advance was paid off (*Bentinck v. London and Joint-Stock Bank* (1893), 2 Ch. 120).

In the *Colonial Bank v. Whinney* (1887), 11 App. Cas. 426, the effect of the bankruptcy of the mortgagor, who had deposited shares certificates, with an equitable mortgagee, was considered. It was urged that since the name of the mortgagor was on the share register of the company the shares were under the order and disposition of the bankrupt, and passed to his trustee in bankruptcy. It was decided, however, that shares were "things in action" coming within the proviso in section 44 of 46 & 47 Vict. c. 52 (now sec. 38 of the Bankruptcy Act, 1914), and that they accordingly did not pass to the trustee, but belonged to the equitable mortgagee.

The question has also to be considered how far a mortgagor would be estopped as against a *bona fide* purchaser, by giving a blank transfer with an authority to a broker to fill it up, where the transfer was void as not being by deed complete in itself. In *Swan v. North British Australasian Company* (1862) 7 H. & N. 603, a broker who had authority to fill up the transfer deed in blank in respect of the shares in one company filled it up as to shares in another company, the shares being subsequently transferred to an innocent party. Inasmuch as the forgery of the broker was the occasion of the loss the plaintiff was held to have a superior title. It is doubtful, however, whether a blank deed as being void at law could give rise to any estoppel.

A question may arise on a deposit of the share certificates of foreign companies as to the rights of the parties, and whether English or foreign law is to be applied thereto. Such a case did, in fact, arise in the *Colonial Bank v. Cady* (1890), 15 App. Cas. 267, where the executors of a registered holder of shares in the New York Central and Hudson River Railroad Company, desiring to have the shares transferred into their own names, sent the certificates to their London brokers, having previously signed as executors the blank transfer on the back of each certificate. One of the partners in the firm of London brokers in fraud of the executors delivered the certificates with other property to the Colonial Bank as security for advances to his firm. Certificates representing 500 shares were also pledged to the London Chartered Bank of Australia. On the bankruptcy of the brokers the fraud was discovered, and the



executors, Cady and Williams, brought actions against the two banks to establish their title to the shares and to restrain the banks from dealing with them. In New York, delivery of the certificates with indorsed transfers signed passed to the banks the legal and equitable title to the shares, and it was contended that the case must be governed by the law in New York. In the course of his judgment Lord Herschell said the appellants "contend that the question is not to be determined by the law of England. They insist that although all the transactions between the parties took place in this country, inasmuch as the company, the title to the shares in which is in question, is a corporation existing under and governed by the laws of the State of New York, recourse must be had to the law of that state to determine what is necessary to pass the property in such shares, and whether under given circumstances the property in them passed, without regard to the place where the transaction took place, which is alleged to have had that result. I agree that the question, what is necessary or effectual to transfer the shares in such a company, or to perfect the title to them, where there is or must be held to have been an intention to transfer them, must be answered by a reference to the law of the State of New York. But I think that the rights arising out of a transaction entered into by parties in this country, whether, for example, it operated to effect a binding sale or pledge as against the owner of the shares, must be determined by the law prevailing here." It was further held that the conduct of the executors in delivering the transfers being consistent with an intention either to sell or pledge the shares, or to have themselves registered as the owners, they were not estopped from setting up their title against the banks, and that the banks ought to have inquired into the broker's authority.

Though the question of registration of transfers without production of the share certificates is said to be discretionary, still a company has an undoubted right to refuse to register till it has been proved that the certificates have been lost, and a proper indemnity is offered. In the *Société Générale de Paris v. Walker* (1886), 11 App. Cas. 20, Lord Blackburn stated the law as follows: "When first shares in joint-stock companies were made transferable, and actions were brought by vendors against purchasers of such shares, a difficulty arose as to what was sufficient evidence of the title of the vendor to the shares which he required the purchaser to accept. To

meet this difficulty, in the first Joint-Stock Companies Act, that of 1844, 7 & 8 Vict. c. 116, s. 52, it was enacted 'that it shall be the duty of all Courts of Justice, judges, justices, and others to admit such certificate as prima facie evidence of the title of the shareholder to the share therein specified; nevertheless the want of such certificate shall not prevent the holder of any share from disposing thereof.' And in the Companies Clauses Consolidation Act, 1845, and the Companies Clauses Consolidation (Scotland) Act, 1845, under the head, Distribution of Capital, is a clause (sect. 12) the same in both Acts: 'the certificate shall be admitted in all courts as prima facie evidence of the title of such shareholder, his executors, etc., to the share therein specified; nevertheless, the want of such certificate shall not prevent the holder of any share from disposing thereof.' The Act of 1844 was repealed by the Joint-Stock Companies Act, 1856, the 20th and 21st sections of which are: '20. The transfer of any share in the company shall be in the form marked F in the schedule hereto, or to the like effect; and shall be executed both by the transferor and transferee; the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in a register book in respect thereof. 21. A certificate under the common seal of the company specifying any share or shares held by any shareholder shall be prima facie evidence of the title of the shareholder to the share or shares therein specified.' This Act again was repealed by the Companies Act, 1862. The Companies Clauses Consolidation Acts of 1845 have not, as far as I am aware, been altered, as far as regards this subject, by any subsequent legislation. Now I quite agree that the legislature did not enact that the production of the transferor's certificate should be a condition precedent to the registration of the transfer; and in the earlier acts it was expressly declared that the want of possession of a certificate should not prevent the holder of a share from disposing of the same. But very soon (I cannot tell how soon) those who took as security from the holder of shares an engagement by which he bound himself not to part with the shares to anyone else until that security was discharged, perceived that the security would practically be much better if they had the certificates in their possession. The registered holder of the shares still might, if dishonest enough, in violation of his contract, execute a transfer, but he would have much more difficulty in finding a transferee who *bona fide* would be led to



believe that he was entitled to do so. And, I do not know how soon, those who managed companies of this kind and had the control of the register became aware that, if they registered a transfer at once and on its being presented to them, even if it was accompanied by the certificates, or as it is called, 'in order,' there was a risk that they might register a forged transfer and not only do an injury to others, but put the company itself in a difficulty. It became, therefore, usual when a transfer was brought not to register it at once, but, as one precaution, to write to the registered address of the shareholder, and inform him that such a transfer had been lodged, and that if no objection was made by him before a day specified it would be registered. This was the course pursued in *Tayler v. Great Indian Peninsula Railway Company* (28 L. J. Ch., 285), and notice thus given enabled Tayler to prevent the registration of what turned out to be a forgery. Soon after this the case arose of *Ex parte Swan* (7 C. B., N. S., 400); *Swan v. North British Australasian Company, Limited* (1862), 7 H. & N. 603. That company was framed under the Act of 1856. The certificate was under the seal of the company, and on it was a note: 'No transfer of any of these shares will be registered unless accompanied by this certificate.' It is printed in the report and was dated the 15th of September, 1857. This is the earliest mention that I can find of such a note. What purported to be a transfer duly executed by Swan to Horace Barry, accompanied by the certificates, was lodged with the company. The transfer deed and the certificate are set out in the report. The secretary of the company adopted the same precaution as had been adopted by the Great Indian Peninsular Company, and before registering wrote to the address given by Swan to them, viz.: Mr. Robert Swan, care of W. L. Oliver, 41 Austin Friars, Old Broad Street, describing the transfer lodged, and the certificate, and adding, 'the transfer will be retained here for three clear days from the date hereof, in order to afford you an opportunity of communicating with me in the event of there being any irregularity in the transaction, and failing your reply within the time mentioned the transfer will be registered and a new certificate issued to the purchaser.' The forger, Oliver, who was afterwards convicted, intercepted this letter. The transfer was registered and a new certificate issued to Barry. The result of the litigation showed that even after all these precautions the company did suffer from registering the transfer, being

obliged in the end to restore the shares to Swan. *In re Bahia and San Francisco Railway Company* (1868), *L.R.*, 3 *Q.B.*, 584, the facts were very similar, but the point decided was not quite the same. The certificate is set forth in the special case, and probably had not on it such a note, at all events it is not there set out. But the point decided was that the company were liable to make good their loss to persons who had purchased and paid for the shares from those who produced genuine transfers from those who had been registered along with genuine certificates granted to them, although that register was set aside. All the judges put it on the ground that in the usual course of business the production of the certificates along with the transfer entitled the transferee to pay on the faith of the certificate, which therefore amounted to a preclusion against the company. This certainly, in my mind, shows that those on whose advice companies, before registering a transfer, which would entitle the transferee to a certificate, required that the certificate already issued should be produced, or its non-production accounted for, advised well; and that the note on the certificate to this effect calling the attention of those who had the shares was fair and proper. Such a note does not prevent this company, if a proper case is made before them, from exercising the power given by Article 35. Nor does a similar note on a certificate issued by a company, under the Companies Clauses Act, 1845, prevent the directors from exercising the similar power given by section 13 of the Companies Clauses Act, 1845; but it does make it important for those who purchase shares to see that the transfer is not only by a deed duly executed, but is accompanied by the certificate. Unless that is so, the transfer, to use the phrase of the witnesses in this case, is 'not in order.' And without going further, it at least makes it not wrong for the company to pause and make some inquiry before exercising their powers."

The Directors are entitled to a reasonable time, it has now been decided, for the consideration of every transfer before they register it, although not expressly empowered in that behalf by the Articles of Association (*In re Ottos Kopje, Limited*, (1893), 1 *Ch.*, 618).

Companies, however, are not protected, notwithstanding all the precautions that they have taken, in the event of fraud. Thus, if registration has been effected by means of forged transfers, the title of the real owner is not thereby affected.



Thus in *Barton v. North Staffordshire Railway Company* (1888), 38 Ch. D., 458, and *Barton v. L. & N.W. Railway Company* (1889), 24 Q. B. D., 77, where one executor and trustee of a will had made a transfer of railway shares, which were registered in the names of both executors and trustees, in accordance with the provision of the Companies Clauses Act, 1845, and forged the name of his co-executor and trustee to the transfers which were then registered, the plaintiffs, a new trustee appointed in place of the fraudulent trustee and the innocent trustee, were held entitled to have the transfers treated as a nullity, and the company were ordered to register the plaintiffs as owners of the stock. In such a case as this the Statute of Limitations would begin to run from the time of the refusal of the company to treat the plaintiffs as shareholders, when the forgery was made known to them. A number of cases have decided that a *bona fide* purchaser who has purchased on the faith of the companies' certificates is entitled to be indemnified in damages by a company for any loss he has sustained, since the companies' certificates are issued for the purpose of being acted upon. The principle, however, on which the Courts act is stated in *Ottos Kopje, Limited* (1893), 1 Ch., 618, where shares were bought upon the faith of a share certificate issued by the company, and the purchaser tendered a transfer to himself duly executed together with the share certificates, which the company declined to register on the ground that the certificates had been fraudulently issued by a late secretary, who had made fraudulent transfers of shares and falsified the share register, and had induced the Directors to sign and affix the seal of the company to the certificate in question without checking the share register. The purchaser was held entitled to maintain an action at common law against the company, who were estopped from denying his right to be registered. The cause of action, however, did not arise from an implied warranty upon the certificate or breach of warranty arising out of the certificate, since a certificate is not like a promissory note. It does not transfer a chose in action; it is only a representation. It arises from an omission to do something which ought to be done, or the doing of something which ought not to be done. To give rise to a cause of action the court will look elsewhere than to the assumption that the company cannot dispute the facts stated in the certificate. There must be a refusal by the company to do what it was bound

to do, or a refusal by an officer of the company to do what that officer was bound to do.

The actual giving of a certificate, although a representation to a possible transferee, does not amount to more than a representation by the company to such transferee, which was indeed intended to be shown to him at the time of the sale, but which, as between the company and the transferee, would not, unless it were fraudulent, give rise to a cause of action at common law, unless there was either a duty on the part of the company towards the transferee, or a contract at common law to make the representation good. That was the decision in *Derry v. Peck* (1889), 14 *App. Cas.* 337. If the transferee has a right of action upon the certificate, it could only be because it is an implied warranty between the company and him, upon which an action could be brought. There is no privity at all between the company and the transferee. Neither is there any implied warranty, but this rule does not hold good where there has been in fact no certificate issued by the company as in *Ruben v. Great Fingall Consolidated* (1906), *A. C.*, 439. There the facts were that the secretary of the defendant company applied to the plaintiffs, who were stockbrokers, to procure for him a loan of £20,000 in order to enable him to purchase 5,000 shares in the defendant company. Accordingly the plaintiffs arranged with a firm of bankers to advance the money upon a transfer of the shares to the plaintiffs' names. The secretary forged a transfer in the name of one Hety as transferor. The transfer was duly executed by the bankers as transferees, and then the plaintiffs delivered it to the secretary in exchange for a certificate. The certificate purported to state that the bankers were the registered proprietors of 5,000 shares; it purported to be signed by two directors; the seal was affixed to it and it was countersigned by Rowe himself as secretary. In fact, the names of the two directors were forged by Rowe, and the company's seal was affixed by Rowe fraudulently, and not for or on behalf of or for the benefit of the defendant company, but solely for himself and for his own private purpose and advantage. Upon this the bankers advanced £20,000. When the fraud was discovered the plaintiffs were obliged to repay to the bank the sum of £20,000, and brought this action against the defendant company upon the ground that they were liable for the fraud of Rowe. The action was for damages for refusing to register the plaintiffs as owners of the shares.



The doctrine that persons dealing with limited liability companies are not bound to inquire into their indoor management and will not be affected by irregularities of which they had no notice is well established, but this doctrine only applies to irregularities that otherwise might affect genuine transactions. It does not apply to forgeries.

In *Bishop v. Balkis Consolidated Co., Ltd.* (1890), 25 Q. B. D., 512, the effect of the certification of a transfer by the company's solicitor was considered under the following circumstances. A shareholder in the company had transferred his shares to a purchaser, and his share certificate was lodged with the company to enable the purchaser to complete his title. The shareholder subsequently purported to transfer a portion of the shares to another purchaser, who, in his turn, sold and executed a transfer to the plaintiff. The company's secretary, in the manner usual upon the transfer of shares, certified the transfer by placing upon it the words "certificate lodged," although no certificate was lodged in respect of the transfer; and upon the faith of this certification the plaintiff paid for the shares. On the defendants declining to recognize the plaintiff as the owner of the shares, he brought an action to recover their value from the defendants. It was held that the certification was a representation which had been acted upon, and that the plaintiff was not entitled to recover the value of the shares from the company.

This case, however, was discussed in *McKay's case* (1896), 2 Ch. 757, where in the winding-up of the Concessions Trust, Limited, the liquidators placed the name McKay on the list of contributories in respect of 300 shares at 5s. each. McKay took out a summons asking that the list and the liquidators' certificate finally settling the same might be varied in respect of the inclusion of his name therein as an unpaid shareholder, and that his name might be struck out or entered as a fully paid shareholder. It seemed that the applicant purchased seventy-five shares numbered 7082 to 7156, and twenty-five more of them, numbered 7022 to 7046, in the ordinary way of business through a stockbroker at a premium. The two transfers executed by the transferor and by the applicant as transferee described the shares as fully paid. Each of the transfers bore a certificate, signed by the company's secretary, that the certificate of the shares had been lodged with the company. Certificates for the shares had

been issued to the transferor. They did not state on the face of them whether the shares were fully paid up or not, but on the back of each of them there was an indorsement, signed by the secretary, but not under the seal of the company, stating the numbers of the shares, and that they were fully paid up. Only 3s. a share had been paid, and the certificates held by the transferor had not been lodged with the company as stated in the certification. The applicant later purchased another lot of 200 shares, numbered 76679 to 76878, from the managing director of the company, paying 2s. a share for them. They were described as fully paid, although 3s. a share only had been paid. The transfer bore the same form of certification as the transfers of the 100 shares, but no certificate in respect of the 200 shares had been issued to any one before the transfer.

The certificates issued to the applicant did not state whether the shares were fully paid up or not. It was held by Vaughan Williams, J., that when a transfer for value, purporting to relate to fully paid shares in a company, bears on the face of it a certification by the secretary of the company that the share certificate has been lodged with the company, the certification amounts to a statement that a certificate of the shares described in the transfer has been lodged, and the company is estopped from denying that the shares are fully paid up, even though no certificate has been lodged with the secretary, or the certificate lodged does not say whether the shares are fully paid up or not.

Mr. Justice Vaughan Williams said : " Does the certification imply that the certificate produced was a certificate of the ownership of fully paid shares ? I have no evidence on this point, but I believe there is no doubt that, according to the practice of the Stock Exchange, such a certification on a transfer purporting to be a transfer of fully paid shares would be taken to certify the lodgment of a certificate of ownership of fully paid shares. If, however, the liquidators desire to give evidence on this point, I will give them the opportunity of so doing. The secretary certifies that the documents produced to him are in order, i.e., that they are right on the face of them ; but if I am right in my view, the documents would not have been in order unless a certificate of fully paid shares had been produced. The same reasoning seems to me to apply to the 200 shares. According to the case of the company, no certificate which was in order could have been produced. The transferor could have



obtained his certificate for partly paid shares and nothing else, and this would not have been in order; and I think that to hold that the company is estopped from saying that there was no certificate of the ownership of these shares as fully paid is not to make the company by their certification warrant the title of the transferor, but merely to make them warrant the production to them of a certificate respecting these shares as fully paid; and the certificate which the transferor could have obtained was not such a certificate."

Every transfer of stock and shares under the Stamp Act, 1891, is chargeable with duty.

A conveyance or transfer whether on sale or otherwise—

(1) Of any stock in the Bank of England .. .. 15 6

(2) Of any stock of the Government of Canada inscribed in books kept in the United Kingdom, or of any Colonial stock to which the Colonial Stock Act, 1877, applies—for every £100 or for any fractional part of £100 of the nominal amount of stock transferred .. .. 5 0

Otherwise transfers of stocks and shares are chargeable with *ad valorem* duty at the following rates—

	£	s.	d.
If the consideration does not exceed £5 .. ..		1	0
Consideration exceeding £5 and not exceeding £10 ..		2	0
£10 and not exceeding £15 .. ..		3	0
£15 " " " £20 .. ..		4	0
£20 " " " £25 .. ..		5	0
£25 " " " £50 .. ..		10	0
£50 " " " £75 .. ..		15	0
£75 " " " £100 .. ..	1	0	0
£100 " " " £125 .. ..	1	5	0
£125 " " " £150 .. ..	1	10	0
£150 " " " £175 .. ..	1	15	0
£175 " " " £200 .. ..	2	0	0
£200 " " " £225 .. ..	2	5	0
£225 " " " £250 .. ..	2	10	0
£250 " " " £275 .. ..	2	15	0
£275 " " " £300 .. ..	3	0	0

An additional 10s. is charged for every £50 or fraction of £50, if exceeding £300.

On a re-sale before completion the duty is charged upon the consideration issuing from the sub-purchaser, whether it is higher or lower than that payable by the original purchaser.

With few exceptions bearer securities require a stamp duty of 10s. per cent, which is in the form of an impressed stamp.

Share warrants are charged with a stamp duty of an amount equal to three times the amount of the *ad valorem* stamp duty which would be chargeable on a deed transferring the share or shares, or stock specified in the amount, if the consideration for the transfer is the nominal value of such share or shares or stock.

A request or authority to the purser of a mine conducted on the cost book system to register a transfer of shares or a notice of a transfer requires a sixpenny stamp. An adhesive stamp may be used, but this must be cancelled by the person by whom the request, authority, or notice is written and executed. A liability to a fine of twenty pounds attaches to anyone who writes or executes such a document without stamping it, or to the purser or other officer of the mine who gives effect to it while unstamped.

The shares on cost book mining companies are as a rule transferred by a document in which the transferor acknowledges that he has transferred, and the transferee acknowledges the acceptance of the shares. The purser as the chief officer of the mine receives this document, which must be signed by both parties, and this is the authority or request to the purser to register the transferee as a shareholder.

As to the reduction of the amount of composition for stamp duties in certain cases see Section 46 of the Finance Act, 1922 (12 and 13 Geo. 5, Ch. 17). As to stamp duties on certificates of registration of Alkali and other works, see subsection 6 of Section 9 of the Alkali, etc., Works Regulation Act, 1906, and Section 47 of the Finance Act, 1922.



## CHAPTER XV

### THE POSITION OF THE SELLER SUBSEQUENT TO TRANSFER

THE legal position of a seller who has executed a transfer, but where the transfer has never been registered by the transferee, is that of a trustee. He has executed the transfer and delivered the certificates, but has not divested himself of his obligations to the company by reason of the purchaser's name not having been registered as owner. The purchaser consequently will possess no more than an equitable title. The position of a seller who is a transferor has under these circumstances to be considered ; secondly, the position of the purchaser till the transfer is registered.

As has already been stated the position of the transferor is that of trustee. It is obvious that in many instances in the ordinary course there must be delay before the transferee can complete his legal title, since there are certain formalities to be complied with, for instance, the registration of the name of the transferee on the books of the company. Some companies prepare their own transfers ; other companies have their offices abroad, and in all cases a certain amount of time must elapse before the name of the new holder can appear as the registered holder of the stocks and shares. Pending the completion of these formalities as the transferor's name is still on the register, he is entitled *prima facie* to all dividends payable, to rights, such as the right to apply for shares in subsidiary companies, etc. On the other hand, he is liable for calls where the capital is unpaid, and, if the company were to be wound up pending the registration of the transferee, to contributions in the winding-up in companies where the liability was not limited ; even when the necessary time has elapsed for complying with the formalities of registration, the rights and liabilities of the transferor continue where the transferee's name is not registered by reason of the company refusing to register it, and also where the proposed transferee declines to execute the transfer and to take the necessary steps to have it registered.

The rules applying to deduction of dividend have already been discussed. As to dividends on securities deliverable by deed of transfer, see Rule 120 (3) and dividends payable after account day, Rule 139. As to making securities *ex-dividend*, Government

Securities, mining, oil, tea, coffee, and rubber shares, bearer and registered debentures, American shares and Victory Bonds are covered by Rule 111. For the deduction of income tax and accrued interest on securities excepted in Rule 138 see Rule 112, and for the deduction of dividend on securities deliverable by deed of transfer when the dividend has been declared Rule 132. For dividends declared payable in foreign currency see Rule 133; for buyer's rights see Rule 113 (4); for new securities in right of old Rule 114. As to rights on option stock see Rule 115 (1) and coupons payable abroad Rule 139; and for a temporary settlement Rule 114.

The right of the transferor as trustee is the right to be indemnified where he has met obligations which are properly the obligations of the transferee. Thus, supposing a company makes a call upon the transferor as registered owner, then the transferor is entitled to call upon the buyer or transferee to repay him what he has paid.

The buyer or the transferee, subject to the Stock Exchange rules, is entitled to all the benefits that accrue from his purchase. He is also liable to indemnify the transferor in respect of calls which the transferor as legal owner has been compelled to pay.

It is now proposed to consider the liabilities of the transferor in various ways, viz., (a) in respect of the genuineness and regularity of the security, (b) in respect of dividends, (c) in respect of rights, and (d) in respect of calls.

(a) IN RESPECT OF THE GENUINENESS AND REGULARITY OF THE SECURITY. Here, in all classes of securities, not merely in those where the ownership passes by transfer, but in cases where the securities pass by delivery, the seller is responsible for the genuineness and regularity of all documents delivered unless an unreasonable time has been taken by the transferor to execute and lodge the document for registration; so also, is the seller of securities passing by delivery and in case of his death, failure, or retirement from the Stock Exchange, such responsibility attaches to each member in succession through whose hands the securities or the ticket representing the securities may have passed. In the case of securities deliverable by deed of transfer the Committee will not, except under special circumstances, interfere in any question arising from their delivery by transfer in blank, nor will they interfere after an official certificate of registration has been lodged unless bad faith is alleged, or take cognizance of any subsequent dispute as to title.



It will be noticed that there appear to be two stages in the Committee's practice as defined by their rule. During the first the Committee will interfere on behalf of the buyer, in the second the Committee will not interfere till the legal issue has been decided. Before considering the latter stage and the meaning of the legal issue, it may be convenient first to see what the seller has to do to complete his part of the transaction. He has to deliver the share certificates and execute the transfer, and then for his own protection the buyer should see that his name is duly registered. But till a reasonable time has elapsed for this purpose, the seller's liability continues. He is not, however, liable indefinitely but only for a reasonable time, and what is meant by a reasonable time is not stated—except in the case of American shares passing by delivery—but from the rule stated in these cases it may be inferred that a reasonable time would be considered such a proper interval of time as would allow the transmission of the certificates to the companies' offices. With American securities, the rule is that eleven clear days between delivery and the closing of the books must be allowed by the seller to the buyer to afford him time for the transmission of the certificates to offices at or east of Chicago. The closing of the books is of course the closing of the books for the purposes of the dividend or rights.

It may be convenient to notice what is here meant by the seller, since it is he who is responsible for the genuineness and regularity of all the documents and for the dividend. The seller will include the immediate seller, and not only the deliverer who makes out the transfer (*Smith v. Reynolds* (1892), 66 L. T., 808 ; 8 T. L. R., 137, 391, C. A. See also *Royal Exchange Assurance v. Moore* (1863), 8 L. T., 242).

In *Smith v. Reynolds*, Smith, a broker, who had sold Railway stock, of which the transfers had been forged by one of two executors of a testator, was held liable to replace the security, the Committee deciding that all persons who had to make good delivery must make it. Thereupon he proceeded against the defendant, an outside broker, who had instructed him to sell, to obtain an indemnity. The question of the validity of the rule with reference to the responsibility of the seller was therefore in question. The Court held that the rule was not unreasonable, and that the words which occur in the rule, "till the legal issue has been decided," meant the legal issue between

the principals of the buying and selling broker, and notwithstanding that the liability was apparently limited by the words, "until reasonable time has been allowed the transferee to execute and duly lodge such documents for verification and registration," the liability continued. The construction of the rule seems to show that there would be an interposition by the Committee up to the period of registration when the purchaser would obtain a *prima facie* title (Companies Act of 1908, s. 23), but not an absolute or indefeasible title to the shares. For once it can be shown that the holder obtained the shares from some person who could not give a title to them, the name of the true owner would be restored to the register and the holder would lose his shares. But if the holder acquired the shares in good faith, having given value for them relying upon a certificate, the Company would be stopped from denying his title to the shares, which he was induced to buy or pay for by being shown the certificate issued by the company itself (*In re Bahia and San Francisco Railway Co.* (1868), *L.R.*, 3 *Q.B.*, 584; *Tomkinson v. Balkis Consolidated Co.* (1893), *App. Cas.*, 396; *Ottos Kopje Mines* (1893), 1 *Ch.*, 618). However, in case of irregularities, as the true owner is entitled to be on the register, the holder in good faith has no right to the shares but only a right to damages against the Company (*Hart v. Frontino Co.* (1870), *L.R.*, 5 *Ex.* 111). Companies have power, if they choose, to adopt the Forged Transfers Acts, 1891 and 1892, and to provide compensation for losses arising through transfers being forged.

(b) WITH REFERENCE TO DIVIDENDS. That the seller should account for the profits received subsequently to sale and before completion is the rule of law, apart from Stock Exchange custom. Thus, in *Black v. Homersham* (1879), 4 *Ex. Div.* 24, it was held that the purchaser of shares bought at auction was entitled to the dividend declared subsequently to the sale, but prior to the completion. The accruing dividend, it should be noticed, is always included in the price of stocks for probate. The rule as to the right to dividends also applies to options. Thus the call of shares, if exercised, includes the right to dividends received by the seller during the term of the option. It also applies to dividends declared in shares, where shares are sold cum div. for a settling day prior to the distribution of the dividend. These dividend shares have to be transferred to the buyer separately as representing a



transaction independent of the original transaction, and must be stamped with a nominal consideration stamp of 10s.

(c) IN RESPECT OF RIGHTS. It sometimes happens that new securities have been issued in place of the old, or a new issue has been made with a preferential allotment to holders of the old. The buyer is entitled to claim these rights. The right of the buyer of these is analogous to the right the buyer possesses to new dividends, and is dealt with later on. It is therefore a question of fact as to whether the buyer purchased these. Were the shares at the time of the bargain quoted ex-new or not? If not so quoted, the buyer would be entitled to new shares not then actually allotted, the issue of which might be authorized either before or after the bargain (*Stewart v. Lupton* (1874), 22 W. R. 855). It will be noticed that the seller is the person responsible for the new shares. This means the immediate seller and not necessarily the person who is going to deliver. (See also Rule 114.)

(d) IN RESPECT OF CALLS. The liability for calls due rests upon the transferor before the transfer is registered. The transferor may, however, previous to delivery, pay any call made on registered shares although not due, and claim the amount of the issuer of the ticket. The explanation of this rule is found in the fact that many companies under the Act of 1862 (and now under the Consolidation Act of 1908) have power to decline to register a transfer of shares where a call is due, although not actually payable. Section 16, 8 Vict. c. 16, The Companies Clauses Act, which applies to Parliamentary companies, provides that no holder is entitled to transfer his shares whilst a call is pending, although not actually payable.

If a fee is payable on registration, this is paid by the buyer where it has been paid in advance by the seller (Rule 128).

## CHAPTER XVI

### TRUSTEE CLIENTS

THE client or clients of a stockbroker often happen to be trustees, and it is advisable to state the law as to their position in instructing stockbrokers with reference to the making and changing of investments, and the payment over to them of the purchase-money. The question of a trustee's responsibility was very fully considered in the case of *Speight v. Gaunt* (1884), 9 *App. Cas.* 1. There Gaunt was a trustee of £15,275, trust money under the will of John Speight. This money he paid to a broker at Bradford named Cooke for the purpose of investment. The residence of the testator, his wife and children, were at Bradford, and the trustee resided half-way between Leeds and Bradford, having a place of business in each of these towns, which he was in the habit of visiting from time to time. By the will of the testator, investments of the trust funds were authorized in the securities of municipal corporations. The trustee thought the business would be most conveniently and properly carried out through a broker, and accordingly employed Cooke, who was a man of good credit and who represented a firm of good standing, the firm having been employed by the testator in his lifetime. He had been previously employed in selling securities of large value for the trust estate, and had when so employed properly discharged his duty. The trustee had no reason to distrust his professional capacity, solvency, or integrity. The trustee by letter informed the testator's daughter that he had given Cooke instructions to purchase £15,000 worth of securities in Huddersfield, Leeds, and Halifax, £5,000 to be invested in each corporation, and this information was intended to reach every other member of the family. Subsequently it appeared that Leeds was the only one of the three which had issued debenture stock, although the others were borrowing money on debentures at  $3\frac{3}{4}$  per cent interest. The Leeds securities were dealt in upon the London and the Country Exchanges, but there was no similar market for those of the Corporations of Huddersfield and Halifax, though they were sometimes applied for through brokers, in which cases a commission seems to have



been allowed to the brokers by the Corporation. Subsequently Cooke informed the trustee that he could get Stockton, which paid more interest than Halifax, and he thought that they were quite safe, but nothing suggested to the trustee any distrust of Cooke. At a later date Cooke came to the trustee with an advice or bought note signed "John Cooke & Son," and directed to the executors of the late John Speight, stating that: "We have this day bought for you as per your order subject to the rules of the London Stock Exchange—

£5,000 Leeds Corporation loan	Debenture	Stock at 105½ net	£5,275
£5,000 Huddersfield	"	"	100
£5,000 Stockton	"	"	100
			<hr/>
			£15,275 "
			<hr/>

Cooke informed the trustee that he wanted the money for the stocks he was to pay for to-morrow. This would have been correct if the transaction had been a real one, for the money would have been payable on the next day, which was the Account or Settling-day in the London Exchange. Cooke received three cheques for the specific amounts, leaving with Musgrave, the accountant to the trust estate, by direction of the trustee, the bought note. Cooke thus obtained the money, substituting, however, for the bought note, not the one he had produced to the trustee, but another in which £5,000 Halifax instead of £5,000 Stockton was represented to have been purchased. Cooke shortly afterwards presented a petition for liquidation when the fraud was discovered. These being the facts of the case, the House of Lords was called upon to say whether it was proper for the trustee to use the agency of a broker for the purpose of the intended investment; (2) whether the payments of the money so employed to the broker under the circumstances of the case were justified.

The Lord Chancellor, Earl Selborne, said in his judgment: "I think that, when an investment of trust moneys is proper to be made upon securities which are purchased and sold upon the public exchanges, either in town or country, the employment of a broker for the purpose of purchasing those securities, and doing all things usually done by a broker which may be necessary for that purpose, is prima

facie legitimate and proper. A trustee is not bound himself to undertake the business (for which he may be ill-qualified) of seeking to obtain them in some other ways, as, for example, by public advertisement or by private inquiry. If he were to do so, he might, in many cases, fail to obtain them upon the most favourable terms. Securities of English municipal corporations are from time to time bought and sold upon the London and some other exchanges. The evidence in this case shows that the 4 per cent debenture stock of the Leeds Corporation was so bought and sold, and the respondent did not know, and had, in my judgment, no reason to know, that the securities of the other corporations also (whether they might be stocks or debentures) were not also so bought and sold. That was a point as to which he might properly and reasonably determine to avail himself of the superior means of inquiry and information which in the ordinary course of his business a broker would possess. He was, therefore, in my opinion, entitled to give such instructions to a competent broker as he actually gave to Cooke in the present case, under which, if the securities in question were procurable by purchase on the Exchange, the broker might be expected so to procure them ; and if he procured them in any other way he might also be expected, in the ordinary course and due performance of his duty, so to inform his principal. It is probable that securities of municipal corporations might more easily be obtained than some others by private inquiry, and perhaps with less probability of their being procurable through a broker, on better terms ; but I should think it dangerous and not justified by any sound principle to hold that the duties and responsibilities of trustees, in respect of such investments (when duly authorized), vary according to the greater or less facility of obtaining them in one way or another in each particular case.

“Thinking, therefore, that the employment of Cooke as a broker in this case, under the instructions actually given to him, was proper and not inconsistent with the duty of the respondent as trustee, the next subject of inquiry is whether it was a just and proper consequence of that employment according to the principle of *Ex parte Belchier (Amb., 218)*, that the trust money should pass through his hands. Upon this point I must first observe that the case appears to me to be different from what it would have been if Cooke had entered into contracts with the several corporations for direct



loans to them by the trustee, and had reported to the trustee that he had done so. The agency of a broker, as such, is not required to enter into a contract of that kind; and if the agency of a person who happens to be a broker is, in fact, employed to do so, I do not perceive why the consequences should be different from what they would be if a solicitor or any other person had been employed. The transaction could not be governed by the rules or usage of the London or any other Exchange. There would be no moral necessity, or sufficient practical reason, from the usage of mankind or otherwise, for the payment of the money to the agent; there would be no difficulty or impediment arising from the usual course of such business, in the way of its passing direct from the lender to the borrower in exchange for the securities; and if it should be found convenient to send it by the hand of a broker, or any other messenger or agent, this might be done by a cheque made payable to the borrower or his order, and crossed, as is usual in direct dealings between vendor and purchaser, debtor and creditor, when payments of considerable amount have to be made. I think it right not to withhold the expression of my opinion, that such a case would fall within the principle of *Rowland v. Witherden* (3 Mac. & G. 568), and *Floyer v. Bostock* (35 Beav. 603, 606), rather than that of *Ex parte Belchier*, (*Amb.* 218). On this subject I find myself in agreement with Bowen, L.J.; nor do I infer from the judgments of Lindley, L.J., and Sir George Jessel that either of them thought otherwise. . . . Unless, therefore, it can be shown that the trustee was not entitled to give or did not in fact give credit to the bought note, as a representation made by the broker (whose good faith he had then no reason to suspect) that the securities had been bought upon or under the rules of the London Stock Exchange, the just and reasonable conclusion from the evidence is that he was justified in paying the money as he did to Cooke."

Lord Blackburn, in his judgment, makes some remarks which are well worth remembering by trustees in making investments. "The authorities cited by the late Master of the Rolls, I think, show that as a general rule a trustee sufficiently discharges his duty if he takes, in managing trust affairs, all those precautions which an ordinary prudent man of business would take in managing similar affairs of his own. There is one exception to this: a trustee must not choose investments other than those which the terms of his

trust permit, though they may be such as an ordinary prudent man of business would select for his own money; and it may be that however usual it may be for a person who wishes to invest his own money, and instructs an agent, such as an attorney, or a stockbroker, to seek an investment, to deposit the money at interest with the agent till the investment is found, that is, in effect, lending it on the agent's own personal security, and is a breach of trust."

The principle enunciated in *Speight v. Gaunt* (1884), 9 A. C. 1, was subsequently embodied in Section 24 of the Trustee Act, 1893, which enacted that—

"A trustee shall without prejudice to the Instrument, if any, creating the Trust, be chargeable only for money and securities actually received by him, notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only for his own acts, receipts, neglects, or defaults, and not for those of any other trustee, nor for any banker, broker, or other person with whom any Trust Moneys or securities may be deposited, nor for the insufficiency or deficiency of any securities, nor for any loss, unless the same happens through his own wilful default, and may reimburse himself or pay or discharge out of the trust premises all expenses incurred in or about the execution of his Trusts and Powers."

Whilst, however, a trustee is permitted to avail himself of the use of brokers and agents to carry out the trust business, a trustee must not rely blindly on his agent's assurance without himself testing the soundness of the opinion for himself, or obtaining the necessary information to enable him to do so (*Whiteley v. Leary* (1887), 12 A. C., at p. 734).

In choosing an investment the trustee should remember that, when registered as the owner of shares, he becomes as between himself and the company the absolute owner, and will be entitled to all remedies against the company, and vice versa, so that should a trustee hold shares carrying any liability he will be liable for calls to the company in the case of any uncalled liability existing. Whether he would have any claim against the estate would, of course, depend upon his having observed the terms of his trust. If a trustee has exercised his discretion, *bona fide*, shares not fully paid up are not necessarily an improper investment (*re Johnson, W. N.*, 1886).



Where a deed contained a power to invest in "such securities as the trustees should think fit," an investment made in debentures in a limited company by way of floating security was held justifiable (*re Smith* (1896), 1 *Ch.*, p. 71). So also when an investment was authorized in such securities as the trustees should in their uncontrolled discretion think fit, they were held not liable for investing in shares of a bank carrying liability (*re Brown* (1885), 29 *C. D.*, 889).

It has been decided that where trustees were authorized "to retain investments in their present form," that they could accept shares in a reconstructed company taking the place of the one in which they held shares (*re Smith* (1902), 2 *Ch.*, 667).

A trustee must, in making an investment, hold the scale equally between the several beneficiaries and between the present beneficiaries and the remaindermen. The law on this point has been well laid down by Mr., afterwards Lord Justice, Kay in the well-known case of *In re Dick*, (1891), 1 *Ch.*, 423, in the following words: "Trustees must bear in mind that the duty of a trustee when called upon to change an existing investment is an important duty, and that it would not be the proper exercise of his discretion to change the investment merely for the sake of increasing the income of the tenant for life, if by doing so he diminishes the security of the capital fund." These remarks, of course, apply equally to the making as to the changing of investments by trustees. A large number of Stock Exchange securities, especially foreign and colonial bonds and debentures, are transferable by mere delivery, and these should not be held by trustees, even where expressly authorized by the trust instrument; if they are held they should be deposited in some place of security, such as a safe deposit, each trustee to have a key, so that the securities cannot be tampered with without the knowledge of the whole of the trustees, or they should be deposited with the trustees' bankers with an order to remove the coupons as they fall due, and with instructions not to part with the securities without the order of the whole of the trustees (*re Pothonier* (1906), 2 *Ch.* 529).

In *Magnus v. Queensland National Bank* (1888), 37 *C. D.* 466, a stockbroker, who was one of three trustees, and acted as broker for the trust, proposed to his co-trustees to sell Brighton stock belonging to the trust, and invest it in North-Eastern. The three trustees

executed a transfer of the Brighton stock, for a nominal consideration, to two persons who were officers of a bank at which the stock-broker was a customer. The broker gave the transfer as security for a loan by the bank to him, and the transfer was registered. Shortly after the broker paid off the loan, and the bank transferred the stock to purchasers from the broker, and, without giving notice to the broker's co-trustees, allowed the broker to receive the purchase-money. The broker invested the money in North-Eastern stock in his own name, and some months after sold the stock and misappropriated the proceeds. After the sale of the Brighton stock the broker had produced an account to his co-trustees, showing the sale of Brighton stock, and a re-investment in North-Eastern stock as still forming part of the trust funds. Two years later the broker absconded. Here it will be seen that the broker's co-trustees were negligent in not seeing that North-Eastern stock was registered in the joint names of the trustees, but the Court of Appeal held that this did not discharge the defendant bank from liability, since the bank receiving from three persons a certain amount of railway stock as security for a loan, on the loan being paid, transferred the stock to purchasers, allowing the purchase-money to be received by one of three trustees, and that, although the trustees had been negligent, the loss was directly attributable to the action of the bank—as Lord Justice Bowen humorously put it : “ A man knocks me down in Pall Mall, and when I complain that my purse has been taken the man says, ‘ Oh, but if I had handed it back again you would have been robbed over again by somebody else in the adjoining street ’—that is the argument of the learned counsel for the appellants as soon as the proposition for which they have contended is reduced to its bare bones.”

In the majority of instances the instrument creating the trust will contain a clause amplifying the powers of the trustee in regard to investment. Where, however, this is not so, the trustee must turn to the law laid down by the Legislature for his guidance. In England, prior to the passing of the Trustee Act of 1889, Consols were the only securities authorized for trustees. Owing to the poor yield of interest and other causes, Parliament passed the Trust Investment Act, 1889, which gave a greatly extended list of securities, and this in turn was repealed and re-enacted by the Trustee Act, 1893 (56 and 58 Vict. cap. 53), which consolidated the law on



the subject of trustees' investments, and, as this Act expressly defines the duties and liabilities of persons investing in trust funds, it is proposed to give the principal sections *in extenso*—

Section I provides—A trustee may, unless expressly forbidden by the instrument (if any) creating the trust, invest any trust funds in his hands, whether at the time in a state of investment or not, in manner following, that is to say—

(a) In any of the Parliamentary Stocks or Public Funds or Government Securities of the United Kingdom.

(b) In real or heritable Securities in Great Britain or Ireland.

(c) In the Stock of the Bank of England or the Bank of Ireland.

(d) In India Three-and-a-half per Cent Stock and India Three per Cent Stock, or in any other Capital Stock which may at any time hereafter be issued by the Secretary of State in Council of India, under the authority of Act of Parliament, and charged on the revenues of India.

(e) In any securities the interest of which is for the time being guaranteed by Parliament.

(f) In Consolidated Stock created by the Metropolitan Board of Works, or by the London County Council, or in Debenture Stock created by the Receiver for the Metropolitan Police District.

(g) In the Debenture or Rent-charge or Guaranteed or Preference Stock<sup>1</sup> of any Railway Company in Great Britain or Ireland incorporated by special Act of Parliament, and having during each of the ten years last past before the date of investment paid a dividend at the rate of not less than three per centum per annum on its Ordinary Stock.

(h) In the Stock or fully paid-up Shares of any Railway or Canal Company in Great Britain or Ireland whose undertaking is leased in perpetuity or for a term of not less than two hundred years at a fixed rental to any such Railway Company as is mentioned in subsection (g), either alone or jointly with any other Railway Company.

(i) In the Debenture Stock of any Railway Company in India

<sup>1</sup> See next page.

the interest on which is paid or guaranteed by the Secretary of State in Council of India.

(j) In the "B" Annuities of the Eastern Bengal, the East Indian and the Scinde, Punjaub and Delhi Railways, and any like annuities which may at any time hereafter be created on the purchase of any other railway by the Secretary of State in Council of India, and charged on the revenues of India, and which may be authorized by Act of Parliament to be accepted by trustees in lieu of any stock held by them in the purchased railway. Also in Deferred Annuities comprised in the register of holders of Annuity, Class D, and annuities comprised in the register of Annuitants Class C of the East Indian Railway Company.

(k) In the Stock<sup>1</sup> of any Railway Company in India upon which a fixed or minimum dividend in sterling is paid or guaranteed by the Secretary of State in Council of India, or upon the Capital of which the interest is so guaranteed.

(l) In the Debenture or Guaranteed or Preference Stock<sup>1</sup> of any Company in Great Britain or Ireland, established for the supply of water for profit, and incorporated by special Act of Parliament or by Royal Charter, and having during each of the ten years last past before the date of investment paid a dividend of not less than five pounds per centum on its Ordinary Stock.

(m) In nominal or inscribed stock issued, or to be issued, by the Corporation of any Municipal Borough, having, according to the returns of the last census prior to the date of investment, a population exceeding fifty thousand, or by any County Council, under the authority of any Act of Parliament or Provisional Order.

(n) In nominal or inscribed stock issued, or to be issued, by any Commissioners incorporated by Act of Parliament for the purpose of supplying water, and having a compulsory power of levying rates over an area having, according to the returns of the last census prior to the date of investment, a population exceeding fifty thousand, provided that during each of the ten years last past before the date of investment the rates levied by such Commissioners shall

<sup>1</sup> In this Act "the expression 'Stock' includes fully paid up Shares; and so far as relates to Vesting Orders made by the Court under this Act includes any fund, annuity, or security transferable in books kept by any Company or Society, or by instrument of transfer either alone or accompanied by other formalities, and any Share or interest therein."



not have exceeded eighty per centum of the amount authorized by law to be levied.

(o) In any of the stocks, funds, or securities for the time being authorized for the investment of cash under the control or subject to the order of the High Court.

The trustees may also from time to time vary any such investment.

In order to prevent as far as possible the necessity for trustees establishing sinking funds in connection with trusts, and to protect the interests of remaindermen in securities, the Act by sect. 2, subsection 2, places a limitation on some of the investments in the above list as follows—

A trustee may, under the powers of the Trustee Act, 1893, Section 2, invest in any of the securities mentioned or referred to in Section 1 of the same Act, notwithstanding that the same may be redeemable, and that the price exceeds the redemption value—

“ Provided that a trustee may not under the powers of this Act (1) purchase at a price exceeding its redemption value any stock mentioned or referred to in subsections (g), (i), (k), (l), and (m), which is liable to be redeemed, within fifteen years of the date of purchase at par or at some other fixed rate ; or (2) purchase any such stock as is mentioned or referred to in the subsections aforesaid, which is liable to be redeemed at par or at some other fixed rate, at a price exceeding fifteen per centum above par or such other fixed rate.”

“ A trustee may retain until redemption any redeemable stock, fund, or security which may have been purchased in accordance with the powers of the same Act.”

The investments authorized for the investment of cash under control or subject to the order of the Court (referred to in subsect. (o) of the Act), are contained in Order XXII, Rule 17, of the Rules of the Supreme Court made by the Lord Chancellor, and have been amended from time to time and are as follows—

Two-and-three-quarters per Cent Consolidated Stock (now called two-and-a-half per Cent Consolidated Stock) :

Consolidated, Three Pounds per Cent Annuities :

Reduced Three Pounds per Cent Annuities :

Two Pounds Fifteen Shillings per Cent Annuities :

Two Pounds Ten Shillings per Cent Annuities :

Local Loans Stock under the National Debt and Local Loans Act, 1887 :

Exchequer Bills :

Bank of England Stock :

India Three-and-a-Half per Cent Stock :

India Three per Cent Stock :

India Two-and-a-Half per Cent Stock :

Indian guaranteed railway stocks or shares, provided in each case that such stocks or shares shall not be liable to be redeemed within a period of fifteen years from the date of investment :

Stocks of Colonial Governments guaranteed by the Imperial Government, or in respect of which the provisions of the Colonial Stock Act, 1900, and of Section 2 (2) of the Trustee Act, 1893, are for the time being complied with.

Mortgage of freehold and copyhold estates respectively in England and Wales :

Metropolitan Consolidated Stock, Three Pounds Ten Shillings per Cent :

Three per Cent Metropolitan Consolidated Stock :

Two-and-a-Half per Cent Metropolitan Consolidated Stock :

Two-and-a-Half per Cent London County Consolidated Stock :

Three per Cent London County Consolidated Stock :

Inscribed Two-and-a-Half per Cent Debenture Stock issued by the Corporation of London, and secured by a trust deed dated the 24th of June, 1897.

Debenture, Preference, Guaranteed, or Rent-charge Stocks of Railways in Great Britain or Ireland having for ten years next before the date of investment paid a dividend on Ordinary Stock or Shares.

Debenture, Preference, Guaranteed, or Rent-charge Stocks of Railways in Great Britain or Ireland guaranteed by Railway Companies owning railways in Great Britain or Ireland which have for ten years next before the date of investment paid a dividend on Ordinary Stock or Shares.

Nominal Debentures or nominal Debenture Stock under the



Local Loans Act, 1875, or under the Isle of Man Loans Act, 1880, provided in each case that such Debentures or Stock shall not be liable to be redeemed within a period of fifteen years from the date of investment.

Inscribed Three per Cent Debenture Stock issued by the Corporation of London, and secured by a supplemental trust deed dated 1st June, 1905.

London County Council Three-and-a-Half per Cent Stock.

Guaranteed Land Stock issued under the Act 54 and 55, Vict. 148.

Guaranteed Two-and-Three-quarters per Cent Stock issued under the Act 3, Edw. VII, c. 37.

Guaranteed Three per Cent Stock issued under the Act of Edw. VII, c. 42.

Three-and-a-Half per Cent Loan of the Corporation of the City of London (Bridges) (1913–1973).

Gold Coast Government Four per Cent Inscribed Stock (1939–1959).

War Loan Three-and-a-Half per Cent Inscribed Stock (1925–1928).

War Loan Four-and-a-Half per Cent Inscribed Stock (1925–1965).

It will be noticed that this list, which is not so full as the list given in the Trustee Act, is somewhat fuller in other respects ; for example, subsection (g) of the list in the Trustee Act stipulates that the debenture and other stocks referred to in the section shall have paid a dividend of not less than 3 per cent on their ordinary shares for 10 years prior to investment. Investments made under the rules of Court need only have paid dividend at any rate whatsoever.

These rules are liable to alteration at any time by the Lord Chancellor pursuant to the powers vested in him by the Act of 1860, and it would be advisable to consult “ The Annual Practice ” or “ The Government Gazette ” for any extension or alteration in them.

Formerly no investment could be made in the securities of Colonial Government, but by the Colonial Stock Act, 1900 (63 & 64 Vict. cap. 62) it is provided (sect. 2)—

The securities in which a Trustee may invest under the powers of

the Trustee Act, 1893, shall include any colonial stock which is registered in the United Kingdom in accordance with the provisions of the Colonial Stock Acts, 1877 and 1892, as amended by this Act, and with respect to which there have been observed such conditions (if any) as the Treasury may by order notified in the *London Gazette* prescribe. The restrictions mentioned in section 2, subsection (2), of the Trustee Act, 1893, with respect to the stocks therein referred to shall apply to Colonial Stock. The Treasury shall keep a list of any Colonial Stocks in respect of which the provisions of this Act are for the time being complied with, and shall publish the list in the *London* and *Edinburgh Gazettes*, and in such other manner as may give the public full information on the subject.

The following are the conditions under section 2 of the Act prescribed by Treasury Order, dated 6th December, 1900—

1. The Colony shall provide by legislation for the payment out of the Revenues of the Colony of any sums which may become payable to stockholders under any judgment, decree, rule, or order of a Court in the United Kingdom.
2. The Colony shall satisfy the Treasury that adequate funds (as and when required) will be made available in the United Kingdom to meet any such judgment, decree, rule, or order.
3. The Colonial Government shall place on record a formal expression of their opinion that any Colonial legislation which appears to the Imperial Government to alter any of the provisions affecting the stock to the injury of the stockholder, or to involve a departure from the original contract in regard to the stock, would properly be disallowed.

The provisions of the Act have been complied with in respect of the undermentioned stocks registered or inscribed in the United Kingdom—

BARBADOS.—Three-and-a-Half per Cent Inscribed Stock (1925-42).

BRITISH COLUMBIA (PROVINCE OF).—Three per Cent Inscribed Stock (1941).

BRITISH GUIANA.—Four per Cent Inscribed Stock (1935);  
Three per Cent Inscribed Stock (1923-45).



CANADA (DOMINION OF).—Four per Cent Loan of 1874 (1907) convertible; Four per Cent Registered Stock (1908); Three-and-a-Half per Cent Registered Stock (1909-34); Four per Cent Reduced Loan (1910); Four per Cent Loan (1910-35); Three per Cent Registered Stock (1938); Two-and-a-Half per Cent Inscribed Stock.

CAPE OF GOOD HOPE.—Four per Cent Inscribed Stock of 1882 (1917-23); Four per Cent Inscribed Stock of 1883 (1923); Four per Cent Consolidated Stock (1916-36); Three-and-a-Half per Cent Consolidated Stock (1929-49); Three per Cent Consolidated Stock (1933-43).

CEYLON.—Four per Cent Inscribed Stock (1934); Three per Cent Inscribed Stock (1940).

GOLD COAST.—Three per Cent Inscribed Stock (1927-52).

GRENADA.—Four per Cent Inscribed Stock (1917-42).

HONG-KONG.—Three-and-a-Half per Cent Inscribed Stock (1918-43).

JAMAICA.—Four per Cent Inscribed Stock (1934); Three-and-a-Half per Cent Inscribed Stock (1919-49); Three per Cent Inscribed Stock (1922-44).

LAGOS (SOUTHERN NIGERIA).—Three-and-a-Half per Cent Inscribed Stock (1930-55).

MAURITIUS.—Four per Cent Inscribed Stock (1937); Three-and-a-Half per Cent Inscribed Stock (1930-55).

NATAL.—Four per Cent Inscribed Stock (1927); Four per Cent Inscribed Stock (1937); Three-and-a-Half per Cent Inscribed Stock (1914-39); Three per Cent Consolidated Stock (1929-49); Three-and-a-Half per Cent Consolidated Stock (1934-44).

NEWFOUNDLAND.—Three-and-a-Half per Cent Inscribed Stock (1945).

NEW SOUTH WALES.—Four per Cent Inscribed Stock (1933); Three-and-a-Half per Cent Inscribed Stock (1924); Three-and-a-Half per Cent Inscribed Stock (1918); Three per Cent Inscribed Stock (1935); Three-and-a-Half per Cent Stock (1930-50).

NEW ZEALAND.—Four per Cent Consolidated Stock (1929);  
Three-and-a-Half per Cent Consolidated Stock (1940);  
Three per Cent Consolidated Stock (1945).

QUEENSLAND.—Four per Cent Inscribed Stock (1915); Four  
per Cent Inscribed Stock (1924); Three-and-a-Half per  
Cent Inscribed Stock (1924); Three-and-a-Half per Cent  
Inscribed (1945); Three per Cent Inscribed (1922-47).

ST. LUCIA.—Four per Cent Inscribed Stock (1919-44).

SIERRA LEONE.—Three-and-a-Half per Cent Inscribed Stock  
(1929-54).

SOUTH AUSTRALIAN.—Loans of 1882-3-5-6-7 (1916-17-36);  
Loan of 1884 (1924); Three-and-a-Half per Cent Inscribed  
Stock (1939) and (1926-36); Three per Cent Inscribed  
Stock (1916-26).

TASMANIAN.—Three-and-a-Half per Cent Inscribed Stock  
(1920-40); Four per Cent Inscribed (1920-40); Three per  
Cent Inscribed (1920-40).

TRINIDAD.—Four per Cent Inscribed Stock (1917-42); Three  
per Cent Inscribed Stock (1922-44).

VICTORIA.—Four per Cent Railway Loan (1881); Inscribed  
Stock (1907); Four per Cent Loans of 1882 and 1883;  
Inscribed Stock (1908-13); Four per Cent Inscribed Stock,  
1884 (1919); Four per Cent Inscribed Stock, 1885 (1920);  
Three-and-a-Half per Cent Inscribed Stock (1921-6) and  
(1923); Four per Cent Inscribed Stock (1911-26); Three  
per Cent Consolidated Inscribed Stock (1929-49) and  
Three-and-a-Half per Cent Inscribed Stock (1929-49).

WESTERN AUSTRALIA.—Four per Cent Inscribed Stocks (1934)  
and (1911-31); Three-and-a-Half per Cent Inscribed  
Stocks (1915-35) and (1920-35); Three per Cent Inscribed  
Stocks (1915-35), (1916-36) and (1927).

The above is a list of the stocks which have complied with the  
terms of the Act, but as these will constantly be added to as new  
issues appear the latest Government gazettes should be consulted, or  
application made to the Agent-General for an autonomous colony, or



to the Crown Agent for the Crown Colonies, who will afford full information on the subject. This is particularly necessary since the termination of the war. This will not, however, be necessary in the case of a new issue where it is a public one as the foot-note at the end of the usual advertisement will give the necessary information.

It should be noted that the restrictions as to investment in redeemable stocks contained in sect. 2 subsection 2 of the Trustee Act (*supra*, p. 300) apply equally to investments in colonial securities under the provisions of the Colonial Stock Act, and several of the stocks in the above list would come under this section.

By section 87 of the Trustee Act, 1893, a Trustee unless authorized by the terms of his trust, shall not apply for or hold any certificate to bearer issued under the authority of any of the following Acts, that is to say—

(a) The India Stock Certificate Act, 1863, (b) The National Debt Act, 1870, (c) The Local Loans Act, 1875, (d) The Colonial Stock Act, 1877.

Nothing in this section shall impose on the Bank of England or of Ireland, or on any person authorized to issue any such certificates, any obligation to inquire whether a person applying for such a certificate is or is not a trustee, or subject them to any liability in the event of their granting any such certificate to a trustee, nor invalidate any such certificate if granted.

Section 7 of the Trust Investment Act, 1889, enacts: "Where the Council of any County or Borough or any urban or rural Sanitary Authority" (now District Council) "are authorized or required to invest any money for the purpose of a loans fund or sinking fund, any enactment relating to such investment shall be modified so far as to allow such money to be invested in any of the stocks, funds, shares, or securities in which trustees are authorized by this Act to invest, except that such Council or Authority shall not by virtue of this section invest in any stocks, funds, shares, or securities issued or created by themselves, nor in real or heritable securities.

"Provided that it shall not be lawful for any such Council or Authority to retain any securities which are liable to be redeemed

at a fixed time at par or at any other fixed rate, and are at a price exceeding their redemption value, unless more than fifteen years will elapse before the time fixed for redemption."

Capital money arising under the Settled Land Act, 1882 (45 & 46 Vict. cap. 38), may, pursuant to section 21, be invested wholly or partially in "investment on Government Securities, or on other Securities on which the trustees of the settlement are by the settlement or by law authorized to invest trust money of the settlement, or on the security of the Bonds, Mortgages, or Debentures, or in the purchase of the Debenture Stock of any Railway Company of Great Britain or Ireland incorporated by special Act of Parliament, and having for ten years next before the date of investment paid a dividend on its ordinary Stock or Shares, with power to vary the investment into or for any other such securities."

The Irish Land Act, 1903, Section 51, provides—

(1) Where any land, purchased by the means of an advance under the Land Purchase Act, is settled land within the meaning of the Settled Land Acts, 1882 to 1890, the trustees of the settlement may, notwithstanding anything contained in the settlement, on the request of the tenant for life, and without the consent of any other person, invest the purchase-money or any part thereof, not only in any investment in which trustees are by any Act authorized to invest trust funds, but also in—

(a) Bonds, debentures, or mortgages secured upon rates or taxes levied under the authority of any Act of Parliament or Provisional Order, by any Municipal Corporation or other local authority in the United Kingdom which shall be authorized to borrow on such security ;

(b) Ground rents arising out of hereditaments in the United Kingdom and not exceeding in amount one-fourth part of the annual value at a rack rent of the premises out of which such ground rents issue ;

(c) Debentures or mortgages of railway companies in the United Kingdom incorporated by Act of Parliament ;

(d) Stocks or shares of any tramway or light railway, dividends upon which are guaranteed under the Tramways (Ireland) Acts, 1860 to 1900 ;



(e) Bonds, debentures, or mortgages secured upon any investment in which trustees are authorized by this or any other Act to invest trust funds ;

(f) Debentures or fully-paid shares or stocks of any railway which for the ten years immediately preceding the date of investment has paid a dividend on its Ordinary Shares.

Provided that the sufficiency of any such investments, as are hereinbefore in this section recited, to realize the sum invested therein, upon the death of the tenant for life or the termination of the trust, shall be secured to the satisfaction of the public trustee under this Act ; and also in—

(g) Any investment authorized by the rule-making authority under section sixty-one of the Supreme Court of Judicature (Ireland) Act, 1877, as amended by any enactment.

(2) That authority shall cause to be published from time to time in the *Dublin Gazette* a list of such investments as may, for the time being, be authorized by them for the investment of purchase-money under this section.

(3) A trustee shall not incur any liability by reason of any investment made in pursuance of the powers conferred by this section.

(4) In the case of all proceedings in relation to any lands sold under the Lands Purchase Acts, or any charges thereon, or any moneys realized thereby, if it appears to the Court that a trustee is, or may be, personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the passing of this Act, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust, and for omitting to obtain the directions of the Court in the matter in which he committed such breach, then the Court may relieve the trustee, either wholly or partly, from personal liability for the same.

*Public Trustee.*—Section 52 provides : (1) For the purpose of the Lands Purchase Acts there shall be a public trustee.

(2) The public trustee shall be a corporation under that name, with perpetual succession and an official seal, and may sue and be sued under that name.

(3) The Lord-Lieutenant shall appoint a fit person to the office of public trustee to hold that office during pleasure.

(4) The public trustee shall, out of money provided by Parliament, be paid such salary as the Treasury may sanction.

(5) The public trustee may employ such officers and persons as, subject to the sanction of the Treasury, he may find necessary for the purposes of this Act, and those officers and persons shall be remunerated at such rates and in such manner as the Treasury may sanction, and the expenses of and incidental to the office of public trustee shall be paid as part of the expenses of the Land Commission.

(6) No fees shall be payable to the public trustee for any services rendered by him under this Act.

(7) The public trustee shall not incur any liability by reason of any act or thing done by him, in good faith, in pursuance of the provisions of this Act.

(8) The public trustee may hold property jointly with any persons or corporation aggregate or sole, and under that name may be entered in the books of any company or person as holder, either alone or jointly with any persons, of stock, shares, or securities entered in such books.

(9) The order of the public trustee, given under his seal, shall be a necessary and sufficient authority to any such company or person for the transfer of any such stock, shares, and securities, so far as respects the interest of the public trustee.

(10) Where any settled land has been purchased by means of an advance under the Land Purchase Acts, and there is no trustee of the settlement, the public trustee may be appointed by the Land Commission to be trustee of the settlement.

(11) Where the trustees of any such settlement refuse or neglect to invest the purchase-money of any securities authorized in pursuance of the last preceding section, the tenant for life may apply to the Land Commission to substitute the public trustee for those trustees, and the Land Commission may by order make such substitution accordingly.

(12) The trustees of any such settlement may apply to the Land Commission to be discharged from their trust and that the



public trustee be appointed in their place, and the Land Commission may, if they think fit, make an order accordingly.

(13) Where the public trustee is appointed trustee of any settlement under the provisions of this section, the Land Commission may make such further or other orders as may be necessary for the purpose of vesting the trust fund in him, or otherwise as the circumstances of the case may require.

(14) The powers conferred on the Land Commission by the foregoing provisions of this section may be exercised by the Land Judge in any case where the purchase-money of land, sold under the Land Purchase Acts, is distributable or has been distributed by him, and those provisions shall apply accordingly with the substitution of the Land Judge for the Land Commission.

(15) Rules may be made by the Land Judge and the Land Commission, with the approval of the Lord-Lieutenant, for the purpose of carrying this section into effect, and for regulating the exercise of the powers and duties of the public trustee ; and in particular may provide that the trustee shall, on the request of any person proposing to sell an estate, give an estimate of the probable financial effect of such sale.

The investments authorized by Section 51, subsection (g), are contained in an Order in Council dated 21 January, 1904, and are as follows—

India Guaranteed Railway Stocks or Shares, provided in each case that such stocks or shares shall not be liable to be redeemed within a period of fifteen years from the date of investment ;

Inscribed Stocks of Colonial Governments guaranteed by the Imperial Government ;

Mortgage of freehold and copyhold estates respectively in Ireland ;

Debenture Preference Guaranteed or Rent-Charge Stocks of Railways in Great Britain or Ireland, having for ten years next before the date of investment paid a dividend on Ordinary Stock or Shares ;

Debenture Preference Guaranteed or Rent-Charge Stocks of Railways in Great Britain or Ireland guaranteed by Railway Companies owning Railways in Great Britain or Ireland which have for ten years next before the date of investment paid a dividend on Ordinary Stock or Shares.

## SCOTCH INVESTMENTS

The principal Act regulating the investment of Scotch Trust Funds is the Trusts (Scotland) Amendment Act, 1884 (47 & 48 Vict. cap. 63). By Sec. 3 Trustees, Curators, Tutors, and Factors may, unless expressly prohibited by the terms of their Trust, invest the Trust funds

(a) In the purchase of—

(1) Any of the Government stocks, public funds, or securities of the United Kingdom ;

(2) Stock of the Bank of England ;

(3) Any securities the interest of which is or shall be guaranteed by Parliament ;

(4) Debenture Stock of Railway Companies in Great Britain incorporated by Act of Parliament ;

(5) Preference, Guaranteed, Lien, Annuity, or Rent-charge Stock, the dividend on which is not contingent on the profits of the year, of such Railway Companies in Great Britain as have paid a dividend on their Ordinary Stock for ten years immediately preceding the date of investment ;

(6) Stock or annuities issued by any Municipal Corporation of Great Britain, which annuities, or the interest or dividend upon which stock, are secured upon rates or taxes levied by such Municipal Corporation under the authority of any Act of Parliament. See also Trusts (Scotland) Act, 1898, below.

(7) East India Stock, stocks, or other public funds of the Government of any Colony of the United Kingdom approved by the Court of Session, and also bonds or documents of debt of any such Government approved as aforesaid, provided such stocks, bonds, or others are not payable to the bearer ;

(8) Feu-duties or ground-annuals.

(b) In loans—

(9) On the security of any of the stocks, funds, or other property aforesaid ;

(10) On real or heritable security in Great Britain ;



(11) On debentures or mortgages of Railway Companies in Great Britain, incorporated by Act of Parliament ;

(12) On bonds, debentures, or mortgages secured on rates or taxes levied under the authority of any Act of Parliament, by Municipal Corporations in Great Britain authorized to borrow money on such security ;

(13) On Indian railway stocks, debentures, bonds or mortgages on which the interest is permanently guaranteed by the Indian Government and payable in sterling money in Great Britain. See also Trusts (Scotland) Act, 1898, below.

And by the Trusts (Scotland) Act, 1898, Government investments are authorized in—

(a) In the purchase of redeemable stock issued, under the Local Authorities Loans (Scotland) Acts, by any local authority in Scotland ;

(b) In loans on bonds, debentures, or mortgages secured on any rate or tax levied under the authority of any Act of Parliament by any local authority in Scotland authorized to borrow money on such security.

Scotch trustees are also authorized to invest in Colonial Stocks pursuant to the terms and restrictions contained in the Colonial Stock Act, 1900.

The Scotch law on the subject, it will be noticed, differs from the English in that it excludes all Irish real or heritable securities or stocks, also British railway contingent preference and waterworks stocks, but admits all municipal loans, registered Indian bonds or stocks, and registered Colonial stocks, if approved by Court of Session.

## CHAPTER XVII

### OUTSIDE BROKERS

THE origin of the term "outside broker" probably arose about the time or soon after the building of the Stock Exchange. Men who, from various causes, were then excluded from its precincts, were still brokers and admitted as such by the Corporation of the City, and thus, though not members of the Stock Exchange, they were legally entitled to describe themselves as sworn stockbrokers. The public naturally would not readily appreciate the distinction to be drawn between members of the Stock Exchange who were brokers, and licensed brokers not members of the Stock Exchange. The abuses that consequently existed led to the passing of the Acts of 1870 and 1884. The legal effect of these Acts has been stated in an earlier portion of the book. The outside broker being no longer able to describe himself as a sworn stockbroker lost the advantage that the title gave him, but he still might carry on business as a broker. His business would hardly, however, have continued to grow and flourish as it did, but for the ingenious invention of the tape machine, which, first introduced on the New York Stock Exchange in 1867, about five years later made its appearance on the London Stock Exchange. The tape machine quotes the prices which obtain from time to time during the day on the market. These are supplied to subscribers of the Exchange Telegraph Co. The introduction of the tape machine was at first not received with much favour. Originally only one of the Company's representatives was allowed on the Stock Exchange by the Committee, but subsequently the number was permitted to be increased as its convenience and utility became appreciated. The method by which the information is obtained in the first instance is through the Company's representatives attending in the Stock Exchange and inquiring of the jobbers in the various markets the prices quoted for particular stocks. Possessed of this information, they convey the price to the Company's operators, who transmit it in turn to the Company's subscribers, and the result is seen on the tape which is reeled off the machine in the offices of the subscribers. The rise in the popularity of the machine



led to a corresponding increase in the popularity of the outside broker, and ultimately the Committee of the Stock Exchange intervened. One principal reason of this increase of popularity was due to the fact that the Stock Exchange speculator could see for himself the prices quoted of the various stocks on the tape machines of the outside broker, and as the broker provided rooms comfortably furnished and lavishly supplied with financial and daily papers, they formed an idle resort for many who hoped by speculation to enrich themselves. It was a favourite occupation with many to look in at lunch time to note the prices, or just about four o'clock when the last quotations were appearing on the tape. No doubt by reason of these facilities an enormous business was done by the outside broker, more especially during the existence of the great mining boom. Since the Stock Exchange authorities by declining to afford the Exchange Telegraph Company any assistance in collecting prices were able to exercise irresistible pressure on the Company, practically to stop its business, they were in a position to insist upon the withdrawal of the tape machines from the outside brokers' offices. The right of the Company to withdraw the machine was legally tested, but unsuccessfully, by one of the outside brokers, and the advantage that many of the outside brokers had hitherto gained was lost. It is interesting to note how prices had been known and made public prior to the collection by the Exchange Company's representatives and the introduction of the tape machine, for undoubtedly they had been made public from the earliest times. The curious, turning over the pages of *The Gentleman's Magazine* during the latter half of the eighteenth century, will find them quoted there. It is true that this list was the official list, and the stocks were few in number, but the fact of their existence in a published form shows that it was someone's business to obtain this information even from the earliest times. Before the Stock Exchange was housed, and whilst stock-jobbing centred round the coffee-houses and Change Alley, obviously anyone could ascertain the market price of a stock by simply mixing amongst the jobbers, but, later on, when the public were excluded, the prices had to be obtained from members leaving the house, or by brokers entering it for the purpose. The withdrawal of the tape machine from the outside broker did much to check his business, but it has failed to destroy it. Amongst

the reasons that may be ascribed for its continued existence is the power the outside broker possesses of advertising his business, and painting his success in forecasting the future in the most glowing colours, whilst the legitimate stockbroker is forbidden in any way to advertise himself. By specious paragraphs and enticing circulars, the uninitiated, and more especially country residents, are lured into the meshes of the "bucket shop business," as it is popularly called, more often to their sorrow and pecuniary loss than to their advantage. Another reason may be found in the fact that the ordinary individual is conscious that his dealings can only be on a small scale, and is consequently awed by the supposed magnitude of the transactions carried on by brokers on the Exchange. Such a man has generally but a little capital to invest, and therefore he fears that his business would not be welcome to a member of the Stock Exchange. Further, he knows no one to employ. This is probably the most potent factor. It is extremely difficult for a member of a profession, whose knowledge of his fellow-members is naturally considerable, to appreciate the general ignorance of those outside his profession of all but a few of its best known professional names. The barrister, the physician, widely known as they are in their own circles, are often absolutely unknown to the general public, and so with the stockbroker. He is not sought because he is unknown.

The tricks and the wiles of the outside broker have often been exposed. Yet it may be permitted here to recapitulate a few of his business methods. First, he will make it his study to ascertain who are likely to prove customers of his wares. This he does by obtaining complete lists of shareholders in various companies. He will then proceed to circularize them from the lists and addresses which are generally specially compiled from the records of shareholders at Somerset House. This circular will sometimes contain an offer to sell particular shares, most of them of the rubbish order, at a price below the market value. Enticed by the trap, cheques or postal orders are often sent, but neither shares nor money are returned. On inquiry the outside broker will more often than not be discovered to have left the office he had probably occupied only for a short time previously. Proceedings of this sort are no doubt a matter for the police, but it is not always an easy job to trace the identity of the gentleman with the euphonious, but assumed name,



who appeared to the imagination of the sender of the order to be a financial magnate of the first water. He changes his address and his name with such considerable promptitude that his identity is unknown, and he reappears in another guise after an interval of time in a fresh locality to recommence his fraudulent tricks. Another method practised by the outside broker is to offer through the medium of the Press—especially the provincial Press—both to sell and buy shares in a particular company or companies. These shares are not necessarily shares not dealt in on the London Stock Exchange, but, as they are almost invariably shares of small face value denomination, a buyer and a seller having been secured, the broker is able to make a larger profit by bringing the two together than would be possible for a member of the Stock Exchange. The transaction is a genuine one ; that is, there is an actual transfer of shares, but the seller does not sell at the best advantage for himself, neither does the buyer buy. Probably the best aid to the outside broker is the Press, some of the smaller financial organs of which are often run in his interest. Reports appear in their columns of the success that is attending the mining operations of some mine in Africa or Australia. These reports are often supplemented with private circulars or wires from the outside broker, who has probably some thousands of the shares on sale, and sent to persons whose names appear in the lists of mining shareholders supplied them. These are often vendors' shares which would be unsaleable on the London Stock Exchange, since there has been no special settlement or apparent likelihood of a settlement in them. The Stock Exchange rule was that the Committee would not fix a special settling day for bargains in shares or securities issued to the vendors credited as fully or partly paid until six months after the date fixed for the special settlement on the shares or securities subscribed for by the public. This rule, however, did not necessarily apply to reorganizations or amalgamations of existing companies, or to cases where no public shares were issued, or to cases where the vendors took the whole of the shares issued for cash. Till, therefore, a special settlement was fixed for vendors' shares, it will be seen that there would be considerable difficulty in disposing of them unless the services of the outside broker were requisitioned. A vendor came to terms therefore with an outside broker, who used his best endeavours to get rid of them to his clients, or otherwise by advertisements and other methods. One of the first

points that promoters attend to is the making of a market in the House, and this is done occasionally by giving a jobber a call of shares, sometimes a double option. So long as the market exists, the outside broker can quote market prices, but as soon as the market is withdrawn, sales even in his hands become difficult to accomplish. There is no doubt that Stock Exchange quotation of shares powerfully aids the outside broker in selling his wares, for many of the public regard the quotations appearing in the stock and share lists of the daily and financial Press as some guarantee that a company has a reasonable prospect of success.

It is not intended to deal at length with the methods of the outside broker, but the subject would be incomplete without some reference to the cover system pursued by outside brokers. This is generally a system of pure gambling, and transactions entered into are void under the Gaming Acts. It receives its name from the fact that the outside broker, before undertaking to transact business, requires cover or security. This is sent, and a purchase apparently made for the client at a price, although in fact no purchase is made, the broker simply recording the price at which he bought if the client were betting on the rise, or at which he sold if he were betting for the fall. The fluctuations of American shares are frequently sufficient to run off a cover of 1 per cent in the course of a day or even a few minutes, especially when we consider that the difference between the buying and selling prices immediately absorb the greater part of the cover whether the operation is for the rise or fall. The reason why, in law, transactions with outside brokers are usually void, requires some explanation, and reference must be made on this point to the Gaming Acts of 8 & 9 Vict. c. 109 (1845), 55 Vict. c. 9 (1892), to arrive at the distinction that exists between bargains done on the Stock Exchange, where the broker is the agent for the client in the transaction, the contract being entered into subject to the Stock Exchange rules, and bargains on the cover system with outside brokers, where the outside broker is a principal. Contract notes of outside brokers not infrequently contain a clause making them subject to the rules and regulations of the Stock Exchange, but these rules are not applicable, where the real transaction is something altogether different. This is a question of fact determined by all the circumstances of the case. In the *Universal Stock Exchange, Limited v. Strachan* (1896), A. C., 166, the company bought from



the years 1893 and 1894, and sold to the respondent Strachan various stocks and shares at the tape prices of the day. Bought and sold notes were made out by the company in each transaction, stating that they acted as principal or jobber, and subject to the terms printed on the back. The terms of business, *inter alia*, as stated were—

“2. Every purchase or sale contracted by the company is a *bona fide* transaction for delivery on a specified settling day, and the company is always prepared, and by means of its capital able, to deliver or take up any stock it may at any time have bought or sold, and the contracts entered into by the company are not gaming or wagering. All bargains are to be completed on the settling day named in the contract, but any customer wishing to postpone completion of a purchase or sale may arrange with the company (upon terms) for postponement of completion until a future date (carry over) but the company being always prepared to complete on the settling day originally fixed may decline to postpone completion at its option.

“3. The company charges no commission or fees of any kind, but charges a fixed rate of interest at 5 per cent per annum on the purchase-money of all stocks, computed from date of purchase until completion. The buyer to receive from the seller all dividends falling due, while the account is ensuing, and the buyer paying all expenses of transfer of stocks. . . .

“6. The completion of all purchases and sales shall take place at the company's office at noon on the day specified in the contract or otherwise as may be mutually agreed upon . . . .

“8. The company shall have a lien until the account is closed and properly settled upon all the stocks, shares, moneys, or other valuables in its possession belonging to customers for the due performance of any contract or engagement which they may have entered into, with power to realize in case of default.”

Strachan had large dealings with the company, and handed them valuable securities as cover. In 1894 he brought an action against the company to recover these securities, alleging that the contracts were gambling or wagering transactions for differences. On the trial before Mr. Justice Cave, the Company called no witnesses, but the respondent was called, and letters and documents, showing the business that had been carried on, were put in as evidence.

Mr. Justice Cave, in summing up to the jury, stated the law as follows : " The question which you have to try is whether these transactions were real bargains for purchase of stock, or whether they were simply gambling transactions intended to end in the payment of differences. . . . I have no doubt that most, if not all of you, are perfectly familiar with Stock Exchange transactions, but I may make use of that as an illustration of my meaning. A man goes to a broker and directs him to buy and sell so much stock, as the case may be. That may be, in the eye of the purchaser, a gambling transaction, or it may not. If he means to invest his money in the purchase of the stock which he orders to be bought, that undoubtedly is a perfectly legitimate and real business transaction. If he does not mean to take up his stock, if he means to sell again before the settling day arrives, that may be a gambling transaction so far as he is concerned, but it is not necessarily a gambling transaction so far as the broker is concerned ; and in order to be a gambling transaction such as the law points out, it must be a gambling transaction in the intention of both parties to it." After dealing with the evidence and the terms of business, Mr. Justice Cave concluded thus : " Notwithstanding those ostensible terms of business, was there a secret understanding that the stock should never be called for or delivered, and that differences only should be dealt with ? If there was not that secret understanding, then he is not entitled to recover them, and that is the only question with which I need trouble you."

The jury found the transactions were gambling transactions and judgment was entered for the plaintiff, Strachan.

The company moved the Court of Appeal to set aside the verdict, contending that there was no evidence to go to the jury in support of the plaintiff's case ; that the jury were misdirected in that the judge did not tell them that the contract in effect was at the option of either party enforceable at law, and in not telling them that there being a contract in existence they must find for the defendants unless there was sufficient evidence before them that both parties had entered into another contract that the existing contract should never be enforced by either party, and was to be regarded as merely colourable ; and in telling them that if they thought the transactions were by way of gaming and wagering, the plaintiff was entitled to recover the securities. The Court of Appeal dismissed the appeal. The company appealed to the House of Lords, who affirmed the



decision of the Court of Appeal. The argument for the appellants was that where there was a contract of sale and purchase with the right to insist upon delivery on receipt of the shares, it could not be a wager, even though neither party intended to enforce the right. The mere existence of the right was sufficient. Lord Herschell, in the course of his judgment, dealt with this argument; he said: "The proposition amounts to this, that parties who intended to gamble with one another, but wanted to have the security against one another of being able in a court of justice to recover their bets, could compel a court of justice to adjudicate and secure to them their bets by a judgment, if only they inserted in their contract a provision which might in certain events become operative to compel the goods to be delivered and received, although neither of them anticipated such a contingency; the purpose of inserting the provision creating an obligation being only to cloak the fact that it was a gambling transaction, and enable them to sue one another for gambling debts."

It will be seen from this case that the outside broker cannot secure himself by the form of the contract, if in reality the contract is one for the payment of differences, or put in another way, the terms of the contract are immaterial if there is an understanding that differences only shall be paid. The outside broker is usually although not necessarily, a principal; not necessarily, for he may in fact be an agent; but if he is a principal and the transaction is to deal in differences, the transaction is void under the Gaming Act, 8 & 9 Vict. c. 109, s. 18 (*Grizewood v. Blane*, 11 C. B., 526; *Barry v. Crosskey* (1861), 2 J. & H., 1; *Cooper v. Neil*, W.N., 1 June, 1878). On the other hand, where the agreement between the client and the broker renders it necessary that the broker should himself as principal enter into real contracts of purchase and sale with jobbers, and the broker does so and incurs obligations for which actions could be brought against him for non-performance, he is entitled to be indemnified (*Thacker v. Hardy* (1878), 4 Q.B.D., 685). The statute only affects the contract which makes the bet or wager. Although gaming and wagering contracts are not illegal, they cannot be enforced (*Fitch v. Jones*, 5 E. & B., 238). Nor can money paid under them be recovered, since the Gaming Act of 1892 declares that any promise, express or implied, to pay any person any sum of money paid by him in respect of a contract rendered null and void

by 8 & 9 Vict. c. 109, or to pay any sum by way of commission or reward for any services in relation thereto is null and void.

In *Forget v. Ostigny* (1895), A. C., 318, where a Montreal stock-broker was employed to make actual contracts of purchase and sale, in each case completed by delivery and payment, by a principal who never contemplated investment but speculation, it was vainly argued that the transaction was void under Article 1927 of the Court Code, which does not differ substantially from 8 & 9 Vict. c. 109. The Privy Council declined to accede to this contention, since the plaintiff as broker gained nothing whatever way the transaction went, and the essence of gaming and wagering is that one party is to win and the other to lose upon a future event which at the time of the contract is of an uncertain nature. In *In re Gieve* (1899), 1 Q. B., 794, the question of wagering contracts with an outside broker was once more considered. There a commission agent named Moss claimed in the bankruptcy of Gieve, who traded under the name of John Shaw. The following was a specimen of the form of sold note—

“ LONDON, 21st April, 1897.

John Shaw to J. Moss, Esq.

I beg to advise having sold to you—

	Cover.	Price.
20 Canadas .. .. .	1 %	50½

Plus ¼th if stock is taken up. For account, end April. Errors excepted. Subject to the conditions at back.”

The endorsed conditions of contract were as follows—

- “ 1. All stocks or shares become closed without notice whenever the cover is exhausted, so as to limit the liability of the operator, unless arrangements are made to the contrary.
2. All stocks or shares, unless closed prior to the first day of the account, must either be taken up or carried over to the next account.
3. If contangoes or backwardations are not settled separately, the cover will be increased or reduced by the same amount.
4. If it is desired to increase cover, cash must accompany order before the margin is reached, unless arrangements are made to the contrary. And any orders for increasing cover, if



not altered before the close of business on one day, must hold good till the opening price of the next day.

5. It is to be distinctly understood that I am prepared to deliver the stock or shares to which this contract refers, if demanded, but require cash on the first day of the account for securities I have to deliver to customers."

The trustee in bankruptcy rejected the claim by Moss, based upon judgments in respect of a balance of account and damages for non-delivery against Gieve. Moss appealed, and on the motion it was elicited that he was a man of small means, that the transactions consisted in speculations with Gieve in which the differences were given or received on the rise or fall of stocks and shares, Moss giving Gieve a cover of 1 per cent, and these differences were the subject of periodical accounts between them. Moss deposed that he had frequently demanded delivery of the shares, but admitted that he had not paid or even offered to pay cash on the first day of the account, as required by his contract, as a condition for delivery, and that he was never in a position to pay without borrowing.

Mr. Justice Wright reversed the trustee's finding, and said that though there was the gravest suspicion that the transactions between the parties were purely gambling transactions, there was not sufficient evidence that the parties had laid their heads together to conceal a bargain for differences only under cover of a bargain which, though no doubt *prima facie* resulting in differences only, was yet to some extent a real bargain.

On appeal to the Court of Appeal this decision was reversed. In his judgment the Master of the Rolls was of opinion that in the form of agreement it was a gambling transaction: "It runs thus," he said: "'I beg to advise having sold to you 20 Canadas,' at a certain price. If that were all, it would be an ordinary sold note. There would be nothing on the face of it to show it did not mean what it said. It might, no doubt, be proved by parol evidence that the contract did not represent the real meaning of the parties, but here we have something else which to my mind is quite conclusive: 'Plus  $\frac{1}{8}$ th, if stock is taken up.' The expression, 'if taken up' shows plainly that the parties do not intend that the stock shall be taken up; that the buyer need not take it up unless he chooses, but that if he does he is to pay the extra one-eighth. This is not, on the very face of it, therefore, a bargain for sale or purchase at all, and

this is where Wright, J., has, in my opinion, failed to give effect to the real intention of the parties as expressed by the terms of the bargain.

“Then looking at the conditions, what do we find? These conditions make the transaction look much more like a bargain for differences than an ordinary sale of stock. It appears to me that the true meaning of this contract, and the effect really intended by both parties, to be gathered from the language used, is this: ‘This is a bargain for differences, but if you, the buyer, like to pay  $\frac{1}{8}$ th more, then I, the seller, will deliver at the increased price.’”

The Master of the Rolls, dealing with the argument that the transaction was not a gaming one by reason of the option given to purchase the stock, said that “there was no obligation whatever on the buyer to accept delivery, nor on the seller to deliver except upon the payment of the extra one-eighth; he never could have called upon the buyer to pay this extra sum; had he done so the buyer might have answered that he would only pay the difference.”

It may be doubted whether the insertion of a term in the contract for differences enabling the parties to turn the contracts for differences into real contracts by giving power to call for the stock would protect an outside broker making such a contract. The argument that it would, based upon *Shaw v. Caledonian Ry. Co.* (17 R., 466, 475, *et seq.*), and the *Universal Stock Exchange, Ltd. v. Stevens* (40 W. R., 494) was repudiated by the House of Lords in the *Universal Stock Exchange v. Strachan* (1896), A. C., 166, 173, and Lord Herschel said he should require much consideration before he gave his assent to such a proposition. See Lindley, M.R., *In re Gieve* (1899), 1 Q. B., 794, at p. 800.

There is another and distinct class of outside brokers whose clients are not the public as generally understood by that term. There are a few of these firms whose clientele consists mostly of foreign banks and stockbrokers. Some of the large foreign banks are closely allied with such houses and assist them with capital. These outside brokers do a regular stock and share-dealing business without the objectionable cover system. It is difficult to find a *raison d'être* for these firms, but they probably succeed on account of their more intimate knowledge of the peculiar requirements of their customers.



## CHAPTER XVIII

### STOCK EXCHANGE DEALINGS AND THE GAMING ACTS

A VERY natural question is sometimes asked as to why bargains of a speculative nature on the Stock Exchange do not fall within the Gaming Acts. The reason why, at first sight, is not perhaps easy to understand, but the difference may be perceived on a short examination of the nature of a Stock Exchange transaction. A contract on the Stock Exchange is never a contract for the payment of a difference, but is a real transaction for cash or for a day named contemplating the actual transfer or delivery of the stocks, etc., and this transfer and delivery can only be rendered unnecessary by a new and equally real bargain on the one part to accept and pay for on the same day, and on the other part to transfer or deliver an equivalent amount of the same stock. A member having bought stock which he is unable or unwilling to take up balances the transaction by selling a similar amount of (but not the identical) stock for the same settling day for which the bargain was originally made, so as to enable that particular transaction to be written off and balanced. The whole amount of stock or shares to be taken up and delivered balances itself at all times, but the amount of stock to be accepted from or delivered to the several persons with whom any member has dealings is liable to vary with every new transaction entered into (*Thacker v. Hardy* (1878), 4 Q. B. D., 685, C. A.; *Ex parte Grant, in re Plumbly*, 13 C. D., 667; *Ex parte Phillips* (1861), 30 L. J., Bkcy. 1; *Ex parte Marnham* (1861), 30 L. J., Bkcy. 3; *Marten v. Gibbon* (1875), 33, L. T. N. S., 561; *In re Hewett, Ex parte Paddon* (1893), 9 T. L. R., 166 C. A.; *Forget v. Ostigny* (1895), A. C., 318, P.C.; *Lightbody v. Rahbula* (1895), 12 T. L. R., 102). Such being the nature of a Stock Exchange transaction, it became immaterial that the intention of the buyer or the seller in entering into a contract was to speculate, as will be seen by the following illustration: A agrees to purchase a quantity of goods, his desire to purchase being stimulated by the belief that before the actual time of payment arrives he will be in a position to sell the goods at a profit. If he is unable to sell the goods, he must pay for them. It is obvious that the intention or motive of A, the purchaser, here has nothing to do

with the contract, except in so far as A's belief in the rising value of the articles is the inducement to cause him to enter into it, but this intention, motive, or inducement is only one of the ordinary accompaniments of the making of a contract. Contracts are not entered into because the persons contracting believe that they will lose thereby, but because they believe that they will in some way prove beneficial to them. It will therefore be seen that if the purchaser's intention is not the test, then some other test must be applied to discover what is a gaming contract. The statute 8 & 9 Vict. c. 109, s. 18, provides that "all contracts or agreements, whether by parol or in writing, by way of gaming or wagering shall be null and void, and no suit shall be brought or maintained in any court of law or equity to recover any sum of money or valuable thing alleged to be won upon any wager, or which should have been deposited in the hands of any person to abide the event on which any wager should have been made. . . ." What is wagering? For it is clear that the term gaming could have no application. A wagering contract may be defined as a contract by which one person may win or another may lose upon a future uncertain event, if the two parties agree at the time of entering into it that this is the object of the contract. But it is not a wagering contract for A to promise ten pounds if he (A) makes a profit of £100 on an anticipated rise in the value of shares, since there can be no wager unless it is possible for B to lose as well as A.

A time bargain, if its meaning in its proper sense is taken, is merely a contract for the future delivery of something, the amount or value of which cannot be ascertained, but it is not necessarily a wager so as to fall within the provisions of 8 & 9 Vict. c. 109. "For instance," said Lord Justice Cotton in *Thacker v. Hardy* (1878), 4 Q.B.D., 685, 696, "the sale of next year's apple crop is a transaction in which at a future time the parties may be respectively gainers or losers according to the happening of the event; but the essential element of a wagering contract is wanting." "It is not easy to define with precision," said Mr. Justice Hawkins in *Carlill v. The Carbolic Smoke Ball Company* (1892), 2 Q. B., 484, 490, "what is the narrow line of demarcation which separates a wagering from an ordinary contract; but according to my view, a wagering contract is one by which two persons professing to hold opposite views touching the issue of a future uncertain event mutually agree that, dependent upon the



determination of that event, one shall win from the other, and the other shall pay or hand over to him a sum of money or other stake, neither of the contracting parties having any other interest in that contract than the sum or stake he will so win or lose, there being no other real consideration for the making of such contract by either of the parties. It is essential to a wagering contract that each party may under it either win or lose, whether he will win or lose being dependent on the issue of the event, and therefore remaining uncertain until that issue is known. If either of the parties may win but cannot lose or may lose but cannot win, it is not a wagering contract. It is also essential that there should be mutuality in the contract. For instance, if the evidence of the contract is such as to make the intentions of the parties material in the consideration of the question whether it is a wagering one or not, and these intentions are at variance, those of one party being such as if agreed in by the other would make the contract a wagering one, whilst those of the other would prevent it from becoming so, this want of mutuality would destroy the wagering element of the contract and leave it enforceable by law as an ordinary one (*Grizewood v. Blane*, 11 C. B., 526 ; *Thacker v. Hardy* (1878), 4 Q.B.D., 685 ; *Blaxton v. Pye*, 2 Wils. 309). No better illustration can be given of a purely wagering contract than a bet on a horse race. A backs Tortoise with B for £100 to win the Derby. B lays ten to one against him, that is, 1,000 to 100. How the event will turn out is uncertain until the race is over. Until then A may win £1,000 or he may lose £100 ; B may win £100 or he may lose £1,000, but each must be a winner or loser on the event. Under the wager neither has any interest except in the money he may win or lose by it. True it is that one or both of the parties may have an interest in the property of the horse, but that interest is altogether apart from the bet, and each party is in agreement with the other as to the nature and intention of his engagement."

It will be seen from these definitions of wagering that ordinary Stock Exchange transactions do not fall within the meaning of the Gaming Acts.

In *Thacker v. Hardy* (1878), 4 Q.B.D., 685, the plaintiff, a broker, had been employed by the defendant to speculate for him on the Stock Exchange, and to the plaintiff's knowledge, the defendant did not intend to accept the stock bought for him or to deliver the stock sold by him, but expected the plaintiff would so arrange matters that

nothing but differences should pass between them. The plaintiff knew that unless he could arrange matters for the defendant that he would be unable to meet the engagements which the plaintiff might enter into for him. The plaintiff accordingly entered into contracts on the defendant's behalf, upon which the plaintiff became personally liable according to the rules of the Stock Exchange, and he sued the defendant for indemnity against the liability incurred by him, and for commission as broker. It will be noticed that here both the client and the broker knew that the client was speculating, but then the question was not concluded by knowledge of that fact. "The question is," said Lord Justice Bramwell, "not between the jobber in the house and the broker. The bargains made by the plaintiff were what they purported to be; they gave the jobber a right to call upon the broker or the principal to take the stock, and they gave the broker the right to call upon the jobber to deliver it. There was nothing in the transaction from which the jobber could tell whether the transaction was bona fide; that is, for the purposes of investment or whether it was a mere speculation."

As between the broker and the client their respective rights or liabilities arise to sue or be sued from the contract: on the part of the broker, to be indemnified in respect of the obligations he has entered into on his client's behalf in pursuance of his instructions; on the part of the client, to receive the amount that the broker has received on his behalf under the contract or contracts that he has entered into, or from a breach of duty in improperly carrying out or neglecting to carry out his instructions.

The sale of prospective dividends is now prohibited on the Stock Exchange, a rule declaring that no member shall enter into bargains on prospective dividends. The rule, however, has not always been in its present form. Formerly the Committee were content with not recognizing such bargains. Under the old form of the rule, a question arose as to whether bargains in future dividends were not within the Gaming Acts (*Marten v. Gibbon* (1875), 33 *L.T.N.S.*, 561). The facts were that the plaintiffs who were stockbrokers had been employed by the defendant to sell for him the next dividend on £50,000 of South-Eastern Railway A Deferred Stock. The plaintiffs sold it to a firm of Stock Exchange dealers, the dividends declared being in excess of the price at which the plaintiffs had sold them. The plaintiffs requested the defendant to authorize them to pay the difference to



the firm of dealers. The defendant having refused, the plaintiffs paid the amount and sued the defendant on the implied indemnity. There was no evidence as to whether the defendant was at the time of the contract in possession of the £50,000 of stock. The Court declined to say that this was a gaming transaction, since it must be assumed in the absence of any evidence to the contrary that the defendant had the £50,000 of stock in his possession at the time of the contract. Even if it were a wager between the broker and his client, it could not be assumed that the jobbers were aware of that fact, that the rule only meant that the contract would not be enforced by the Committee by expulsion, and that otherwise the contract between the parties was perfectly good.

The question of how far a call option fell within the Gaming Acts was considered in the case of *Buitenlandsche Bankvereinigung v. Hildersheim* (1903), 19 *T. L. R.*, 641, where the Court of Appeal decided that the contract was not a wagering contract and was valid; but it would seem that where the only object of the parties was to profit by the rise or fall of stock, the bargain, though enforceable between the parties, would be a wagering contract (*Universal Stock Exchange v. Strachan* (1896), *A. C.*, 166).

# RULES AND REGULATIONS OF THE STOCK EXCHANGE

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## COMMITTEE

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Election of  
Committee  
for General  
Purposes.

1. On the 20th day of March in every year, or if that day should be a Sunday or Bank Holiday, then on the following business day, a ballot by the Members shall be held for the appointment of a Committee of Thirty Members who shall be called the "Committee for General Purposes," and shall hold office for Twelve months from the 25th of March next following the date of their election, but shall be re-eligible. Notice of such ballot shall be publicly exhibited in The Stock Exchange during Fourteen days previous to the same being held, and a further notice containing the names of the persons on the existing Committee willing to serve again and of all new candidates, their proposers and seconders, shall be publicly exhibited in like manner during Three business days previously to such ballot being held. The Members on the said Committee retiring shall remain in office until the 25th of the same month of March in which their successors shall have been elected, and in case no election shall be made at any such ballot as aforesaid, the Members retiring shall remain in office until the 25th day of March in the following year, or until a valid election shall have taken place under Clause 92 (*Deed of Settlement*). Four business days' notice previous to any ballot of intention to propose any person not already on the Committee and eligible for re-election must be given to the Secretary of the Committee in writing signed by two Members, and the ballot shall be by printed lists containing the names of the persons willing to serve again and of all persons so proposed, distinguishing the former from the latter. In case no valid election be made on the day hereinbefore appointed for that object, the Committee may forthwith, or at any time thereafter, prior to the next ordinary yearly ballot, cause a ballot to be held for such election, on a day to be fixed by the Committee for that purpose, and in all respects, as lastly hereinbefore provided; and the Committee to be appointed by such ballot shall remain in office until the 25th day of March then next following. Every ballot for the election of the Committee for General Purposes, or for supplying vacancies in the Committee, shall be held at The Stock Exchange, and, except as specially provided by these presents, shall be conducted in accordance with the existing practice and usage in reference to such elections. In case of dispute as to



what such practice and usage has been in any particular, the Committee shall from time to time determine the same by Resolution. Provided always that no ballot shall be necessary where the number of Candidates does not exceed the number of vacancies to be filled and in that case such Candidates shall be deemed to be duly elected.—*Deed of Settlement*, sect. xii, cl. 90.

Qualification.

2. (1) No person shall be elected to the said Committee for General Purposes who shall not for the space of Five years immediately preceding the day of election have been a Member, and every person on ceasing to be a Member shall *ipso facto* vacate his seat on the Committee.—*Deed of Settlement*, sect. xii, cl. 91.

Voters.

(2) A Member is entitled to vote although he may not have paid his subscription.

Occasional vacancy.

3. (1) Any occasional vacancy in the said Committee for General Purposes shall be filled up by a ballot of Members to be held for the purpose on a day to be fixed by the Committee for General Purposes, and of which not less than Seven days' previous notice shall be given by the same being publicly exhibited in The Stock Exchange, but otherwise the election shall be carried out in accordance with the provisions of Clause 90. The surviving or continuing Members on the Committee, notwithstanding any vacancy in their number, may act until the same shall be filled up.—*Deed of Settlement*, sect. xii, cl. 92.

Tenure of Office.

(2) Any person elected to supply an occasional vacancy in the said Committee shall hold office for the residue of the year in which he shall be elected, and shall then retire with the other Members of the said Committee.—*Deed of Settlement*, sect. xii, cl. 93.

Procedure.

4. (1) The said Committee for General Purposes shall meet at such times as they may from time to time appoint, and shall determine their own quorum (the same to be not less than Seven Members actually present), and mode of procedure.—*Deed of Settlement*, sect. xii, cl. 98.

Quorum.

(2) Until otherwise determined, the quorum of the said Committee shall be Seven Members personally present.—*Deed of Settlement*, sect. xii, cl. 99.

Committee to regulate business and make rules.

5. (1) The said Committee for General Purposes shall regulate the transaction of business on The Stock Exchange, and may make rules and regulations not inconsistent with the provisions of these presents respecting the mode of conducting the ballot for the election of the Committee and respecting the admission, (which includes re-election) expulsion, or suspension of Members and their clerks, and the mode and conditions in and subject to which the business on The Stock Exchange shall be transacted, and the conduct of the persons transacting the same, and generally for the good order and government of the Members of The Stock Exchange, and may from time to time amend, alter or repeal such Rules and Regulations, or any of them, and may make any new, amended or additional rules and regulations for the purposes aforesaid.—*Deed of Settlement*, sect. xii, cl. 95.

Sub-Committees.

(2) The said Committee for General Purposes may from time to time appoint and remove such Sub-Committees of their own number as they may think fit for any particular purposes or objects or class of purposes or objects, and delegate to them all or any of the powers of the said Committee for General Purposes and may determine and regulate their duties and procedure, and generally may make such regulations for the conduct and

dispatch of business as they may from time to time consider necessary.—*Deed of Settlement*, sect. xii, cl. 96.

6. (1) At the first Meeting of the new Committee after the Annual Election, the members of the Committee shall elect, from amongst themselves, a Chairman and Deputy-Chairman, who shall respectively hold office till the 25th of March next ensuing. In case either appointment shall become vacant, it shall be filled up as soon afterwards as possible. When the Chairman and Deputy-Chairman are absent, the Meeting shall appoint a Chairman.

Election of  
Chairman  
and Deputy-  
Chairman.

(2) In all cases when on a division the votes are equal, the Chairman shall have a second or casting vote.

Casting vote.

7. At the first meeting of the Committee, one of the Members of The Stock Exchange shall be chosen Secretary, who shall hold his office during their pleasure.

Secretary.

8. Three or more Members shall be appointed by the Committee to act as Scrutineers at elections, who shall report the result of the ballot to the Committee, and to The Stock Exchange.

Scrutineers.

9. (1) A Meeting of the Committee shall be held every Monday at a Quarter-past One o'clock, commencing on the first Monday after each annual election.

Meetings :  
Routine.

(2) A Special Meeting of the Committee may be called at any time by the Chairman or Deputy-Chairman, or, in their absence or in case of their refusal, by any three Members of the Committee. One hour's notice at least of such Meeting shall be posted in The Stock Exchange.

Special.

10. (1) A Resolution of the Committee shall not be valid or put in force until confirmed, unless it relate to the shutting of the House, the admission of Members, or Clerks, the re-election of Members, the re-admission of Defaulters or insolvents, the authorization to carry on Arbitrage business, the registration of Remisiers, the fixing of settling days, the making of securities ex-dividend, the granting or refusing of permission for dealings in New Issues or of official quotations, or confirming or varying a Resolution of a Sub-Committee under Rule 5 (2).

Confirmation  
of Resolution.

(2) If a Resolution be not confirmed, and another Resolution be substituted, the substituted Resolution shall require confirmation at a subsequent Meeting.

Substituted  
Resolution.

(3) In cases which do not admit of delay, two-thirds of the Committee present must concur in favour of the immediate confirmation of the Resolution, and the urgency of the case must be stated on the Minutes.

Urgent  
Confirmation.

11. In all cases brought under the consideration of the Committee, their decision, when confirmed, is final, and shall be carried out forthwith by every Member concerned.

Decisions  
final.

12. Notice shall be given in writing of any proposal to alter or add to the Rules, and a copy of such proposal shall be sent to each Member of the Committee.

Alteration of  
Rules.

13. All communications to the Committee shall be made in writing, and no anonymous letter shall be acted upon.

Communica-  
tions to be in  
writing.

14. Members and their Clerks shall attend the Committee when required, and shall give such information as may be in their possession relative to any matter under investigation.

Members and  
Clerks to  
attend when  
required.  
Expulsion of  
Members of  
Committee.

15. The Committee may expel any of their own Members from the Committee, who may be guilty of improper conduct. The Resolution for expulsion must be carried by a majority of two-thirds in a Committee specially summoned for the purpose, and consisting of not less than Twelve Members, and must be



- confirmed by a majority of the Committee, at a subsequent Meeting specially summoned.
- Violation of Rules. 16. (1) The Committee may expel or suspend any Member who may violate any of the Rules or Regulations.
- Failure to comply with Committee's Decision. (2) The Committee may expel or suspend any Member who may fail to comply with any of the Committee's decisions.
- Dishonourable Conduct. Etc., Detrimental, or unbecoming Conduct. (3) The Committee may expel or suspend any Member who may be guilty of dishonourable or disgraceful conduct.
- Improper or Disorderly Conduct. 17. (1) The Committee may censure or suspend any Member who in his conduct or business may act in a manner detrimental to the interests of The Stock Exchange or unbecoming the character of a Member.
- Resolution for expulsion or suspension. (2) The Committee may censure or suspend any Member who may conduct himself in an improper or disorderly manner, or wilfully obstruct the business of the House.
18. A Resolution for expulsion or suspension must be carried by a majority of three-fourths of a Committee present at a Meeting specially summoned, and consisting of not less than Twelve Members, and must be confirmed by a majority of a Committee present at a subsequent Meeting specially summoned.
- Notification to the public. 19. The Committee for General Purposes for the time being may, in their absolute discretion, and in such manner as they may think fit, notify or cause to be notified to the public, that any Member has been expelled, or has become a Defaulter, or has been suspended, or has ceased to be a Member, and the name of such Member. No action or other proceeding shall under any circumstances be maintainable by the person referred to in such notification against any person publishing or circulating the same, and this Rule shall operate as leave to any person to publish and circulate such notification, and be pleadable accordingly.
- Power to dispense with Rules and Regulations. 20. The Committee may dispense with the strict enforcement of any of the Rules or Regulations under the following conditions :
- (i) A Resolution for this purpose must be carried by a majority of three-fourths of a Committee present at a Meeting specially summoned and consisting of not less than Twelve Members.
- (ii) Except in the case of the matters exempted from confirmation by the first clause of Rule 10, the Resolution must be confirmed by a majority of a Committee present at a subsequent Meeting specially summoned.

## RE-ELECTIONS, ADMISSIONS AND RE-ADMISSIONS

- Re-elections and Admissions. 21. (1) The Committee shall, on and after the first Monday in March in every year proceed to re-elect such Members and admit such Candidates, as they shall think proper as Members of The Stock Exchange. Every such re-election or admission shall be for the term of One year only, commencing on the 25th March then instant or last preceding the re-election or admission of any such person.
- Powers of Committee. (2) Such power of re-electing Members and admitting Candidates is hereby declared to be a purely discretionary power, exercisable (and it shall be exercised) by the Committee in a perfectly uncontrollable manner for the benefit of The Stock Exchange as a body (including both Proprietors and Members)

and the decision of the Committee in any case or number of cases shall not be liable to be disputed or challenged by any individual affected thereby. The Committee shall be under no obligation to give to any applicant for re-election or admission any notice of the grounds or reasons upon or for which the Committee are proposing to act in his case, and the Committee shall not disclose or state to any person whose application they have rejected or to any Court or Tribunal the grounds or reasons of or for such rejection. The decision of the Committee upon any application for re-election or admission shall not be liable to be brought into question before or controlled by and shall not be controlled by any Court or Tribunal.

(3) A person who is not a natural born British subject shall not (except as hereinafter provided) be eligible as a Candidate for admission or, in the case of a former Member, for re-election as a Member of the Stock Exchange, and accordingly shall not be admitted or re-elected as a Member. The Committee may, nevertheless, in any particular case and after consideration of the circumstances affecting such case, if in their uncontrolled and uncontrollable discretion they deem it expedient or proper so to do, admit or re-elect as a Member an applicant who, not being a natural born British subject has altogether abandoned his foreign nationality and has been resident in the British Dominions for Ten years and has been naturalized within such Dominions for Five years or upwards next preceding the date of his application.

Naturalization.

(4) A Member re-elected, admitted or re-admitted shall become liable for the amount of Subscription and Fees fixed by the Trustees and Managers.

Birth  
Disqualifi-  
cation.Liability for  
Subscription  
and Fees.

22. Every Member or Applicant for Re-election, Admission or Re-admission shall declare whether he proposes to act as a Broker, Dealer or Clerk, or that he is not engaged in active business, and no Member shall alter his status from Broker to Dealer or from Dealer to Broker without first giving fourteen days' notice to the Committee, which notice shall forthwith be posted in the House.

Status.

23. (1) A Member desirous of being re-elected shall, in each year address to the Secretary a letter, of the form No. 1 in the Appendix.

Application  
for  
re-election.

(2) Each Member of a partnership is required to sign a separate letter.

Partners'  
Applications.

24. (1) A Member who is not desirous of being re-elected in any year shall notify to the Secretary his intention not to apply for Re-election. Notwithstanding this Notice he may apply at any time during the current Stock Exchange year on Form No. 1 in the Appendix, provided he has not exercised his right of nomination or become ineligible under Rule 26.

Discontinu-  
ance of  
Subscription.

(2) A Member in his sureties availing himself of this Rule shall be required to obtain the written consent of his sureties to an extension of their liability equivalent to the unexpired period. (Appendix Form No. 2.)

Extension of  
Suretyship.

25. (1) A former Member who has discontinued his subscription for One year under Rule 24, and who has not exercised his right of nomination or become ineligible under Rule 26, may during the following year only apply for Re-election on Form 3 in the Appendix, with two recommenders without security, such recommenders being qualified as laid down in the first clause of Rule 36.

Re-election  
with two  
Recom-  
menders.



Notice.	(2) A Notice of such application shall be posted in The Stock Exchange for at least Eight days before its submission to the Committee.
Extension of Suretyship.	(3) A former Member availing himself of this Rule while in his sureties shall be required to obtain the written consent of his sureties to an extension of their liability equivalent to the unexpired period. (Appendix Form No. 2.)
Ineligible for Re-election.	(4) If he shall have discontinued his subscription for Two years, he must apply for admission as a new candidate.
Nominations.	26. A former Member is ineligible for re-election under Rule 24 or 25 who during his absence from The Stock Exchange has become ineligible as a Member under Rule 31 or 32 or who has been engaged as a Principal in any business other than that of the Stock Exchange or has become a Member of or subscriber to or a Shareholder or Debenture holder in any other Institution where dealings in Stocks and Shares are carried on.
Resignation of Nominating Member.	27. (1) A Candidate for admission, except Candidates under Rule 29, shall be required to obtain the nomination of a Member willing to retire in his favour, or of a former Member, or of the legal personal representatives of a deceased Member. The nomination shall be on one of the forms in Appendix 15, which shall only be issued on receipt of a written application signed by the nominator and containing the full name of the nominee.
Term of Right to nominate.	(2) A Candidate nominated by an existing Member shall not be balloted for until the resignation of the nominating Member has been accepted by the Committee.
Eligibility of nominee.	(3) Nominations by other than existing Members must be executed and lodged with the Secretary within Twelve months of the death or resignation of the Member, or in the event of his discontinuing his subscription, within the current Stock Exchange year. If not so exercised, the right of nomination shall lapse.
Rejection of nominee.	(4) A nominee must be eligible under these Rules, and, if a Clerk applying for Admission with Two sureties, must have completed the service required by Clause 2 of Rule 33 before the expiry of the right of nomination.
Nominee of deceased Member.	(5) If a nominee be rejected, a further nomination may be lodged within the prescribed period.
Right of Nomination: personal.	(6) In the case of a deceased Member, the probate of the will or letters of administration must be exhibited to the Secretary before the issue of the nomination form.
When not to be exercised.	28. (1) The right of nomination shall be personal and non-transferable.
When deferred.	(2) The right of nomination shall not be exercised by a Defaulter, by a person who is expelled, or who ceases to be a Member under Rules 30 or 173 or in consequence of his failing to acquire or hold the share or shares required by Rules 42 or 45, or by any person ceasing to be a Member whilst under suspension.
When commences.	(3) The right of nomination shall not be exercised by a Member who is, after the 24th March, 1911, re-elected with two Recommenders, under Rule 25, or re-admitted under Rules 43 or 52, within Four years of his re-election or re-admission, but, in the event of the decease of such Member prior to such time, his legal personal representatives may exercise the right of nomination.
	(4) A Member admitted without nomination shall not exercise the right of nomination until after the term of the liability of his sureties shall have expired by effluxion of time, but, in

the event of the decease of such Member prior to such time, his legal personal representatives may exercise the right of nomination.

(5) A Defaulter shall not be required to obtain a nomination before re-admission.

Not required  
by Defaulter.

29. (1) The Committee shall, at a Special Meeting held in December of every year, fix the number of admissions for the year commencing the 25th March following, to be open to Candidates with Two recommenders without nomination. The Resolution fixing the number of Candidates to be so admitted shall not be valid or put in force until confirmed.

Admission  
without  
nomination.

(2) A Clerk having completed Four years' service in The Stock Exchange or the Settling Room in accordance with Clause 2 of Rule 33, may apply on the form No. 16 in the Appendix to be placed on the waiting list of Candidates for election without nomination.

Waiting List.

(3) The names of Clerks so applying shall be placed upon the waiting list in the order of application, and the list shall be posted in The Stock Exchange in December of each year.

Order.

(4) Those within the number fixed by the Committee may be balloted for on or after the first Monday in March for the ensuing Stock Exchange year, provided that their application forms duly signed and complete in all respects be lodged with the Secretary at least eight days before the ballot.

Date for  
Ballot.

(5) A Candidate, within the number fixed by the Committee, who fails to lodge a complete application form within One month from the date of his having the right to do so, shall be placed at the bottom of the waiting list, and the next in order of priority shall be entitled to lodge an application form.

Failure to  
apply.

(6) A Candidate, whose name has been so placed at the bottom of the waiting list, shall be altogether removed from that list, if he fail to apply for Membership when he next has the right to do so.

Removal by  
failure to  
apply.

(7) The Committee may at any time remove any name from the waiting list.

By  
Committee.

(8) The name of a Clerk who ceases to have admission to the House or the Settling Room for a period of Six consecutive months, shall be removed from the waiting list.

By  
Exclusion.

(9) A Candidate, whose name has been removed from the waiting list, and who desires to be reinstated, must make a special application to the Committee.

Reinstatement.

30. A Candidate is ineligible, if he be engaged as Principal or Employee in any business other than that of The Stock Exchange, or if his wife be engaged in business, or if he be a member of, or subscriber to or be a Shareholder or Debenture holder in any other institution where dealings in Stocks or Shares are carried on; and if subsequently to his admission, he shall become subject to any one of these objections he shall cease to be a Member upon Resolution of the Committee to that effect.

Candidates  
engaged in  
other  
businesses.

31. (1) A Candidate is ineligible, who has been a bankrupt, or against whom a Receiving Order in Bankruptcy has been made, or who has been proved to be insolvent, or who has compounded with his creditors, unless he shall have paid 20s. in the £, and obtained a full discharge.

Bankruptcy.

32. A Candidate is ineligible, who has more than once been a bankrupt or insolvent, or compounded with his creditors.

Second  
Bankruptcy.

33. (1) A Candidate for admission must be not less than twenty-one years of age and must be recommended by Three Members. Each recommender must engage to pay Five hundred

Admission:  
Three  
Sureties.



pounds to the creditors of the Candidate, in case the latter shall be declared a Defaulter within Four years from the date of his admission. (Appendix Form No. 4.)

Two Sureties.

(2) If the Candidate has served as a Clerk in the House or the Settling Room for Four years, with a minimum service in the House of Three years, previously to the lodging of his complete application form, Two recommenders only shall be required, who must each enter into an engagement as above mentioned, but for Three hundred pounds.

Ineligible with two sureties.

(3) A Clerk of Foreign birth or a Clerk, who previously to his employment in The Stock Exchange shall have been engaged as Principal in any business, shall only be eligible for admission as a Member with Three sureties for Five hundred pounds each. (Appendix Form No. 5.)

Notice.

(4) A Notice of each application with the names of the recommenders, shall be posted in The Stock Exchange at least Eight days before the Candidate can be balloted for.

Qualification of Recommenders.

34. A Member recommending a Candidate must be of not less than Four years' standing, must have fulfilled all his engagements, and must state in writing that he is not and will not be indemnified. He is required to have such personal knowledge of the Candidate, and of his past and present circumstances, as shall satisfy the Committee as to his eligibility.

Statement by Recommenders.

35. Each recommender shall state in writing—

(i) That the Candidate fulfils all the requirements of the Rules particularly those of Rules 21, 30, 31, 32 and 33.

(ii) That he has read the attached statement by the Candidate, and confirms the accuracy of the same.

(iii) How long he has known the Candidate.

(iv) That from his personal knowledge he is satisfied as to the Candidate's fitness both financially and in all other respects to become a member of the Stock Exchange.

(v) That the Candidate is free to commence business on his own account forthwith if he so desires.

(vi) That he is not and will not be indemnified.

Suretyship : Eligibility.

36. (1) A Candidate may be recommended by a firm, but not by Two members of the same firm, nor by a Member who is an Authorized or Unauthorized Clerk, nor by a Member whose Authorized Clerk the Candidate may be, nor by a Member whose sureties are still liable.

Restriction.

(2) A Member shall not be surety for more than Two new Members at the same time, unless he take up an unexpired suretyship, when the limit shall be Three.

New Sureties.

(3) If a Member enter into partnership with, or become Authorized Clerk to one of his sureties, or if any one of his sureties cease to be a Member during his liability, he shall find a new surety for such portion of the time as shall remain unexpired ; and until such substitute is provided, the Committee will prohibit his entrance to The Stock Exchange.

Objection.

37. A Member, intending to object to the re-election of a Member, the admission of a Candidate or the re-admission of a Defaulter, shall communicate the grounds of his objection to the Committee by letter, previously to the re-election or ballot.

Statement by Candidate.

38. A Candidate for Membership shall be required to state in writing—

(i) Whether any, and if so, what question arises in regard to his candidature under Rules 31 or 32.

(ii) His personal history and occupation or employment since he came of age.

(iii) Whether, if elected, he proposes to act as a Broker or Dealer, on his own account or in partnership.

(iv) That in the event of his not going into business on his own account, no arrangement or understanding exists or will be entered into directly or indirectly between him and his recommenders that he will not do so, or that he shall act only as a Clerk, during the period of their liability.

39. The Chairman shall require every Candidate to acknowledge his signature to the form of application and shall put to the Candidate and his Recommenders such further questions as may be deemed necessary.

40. The election of new Members shall be by ballot, and must be carried by a majority of three-fourths in a Committee of not less than Twelve Members.

41. If any applicant for re-election, admission or re-admission be rejected, he shall not be voted or balloted for again before the 25th of March then next ensuing.

42. (1) A Member on his election shall, before exercising any of the privileges of Membership, become a proprietor in The Stock Exchange, by acquiring One share in the case of a Member admitted with Two sureties, or Three shares in the case of a Member admitted with Three sureties. Should a Member who requires a share qualification fail to obtain the same within Six months, his election shall be cancelled.

(2) The Secretary shall not issue his admission notice to a new Member, until it has been reported to him by the Secretary to the Trustees and Managers, that the new Member has been duly registered as a proprietor of the required number of shares.

(3) The Secretary shall not issue a re-election notice to a Member re-elected under Rules 24 or 25 who on his admission required a share qualification, until it has been reported to him by the Secretary to the Trustees and Managers that the Member is duly registered as a Proprietor of the required number of shares. Should a Member who requires a share qualification fail to obtain the same within Six months, his re-election shall be cancelled.

(4) A Member who shall transfer the share or shares constituting his qualification shall forthwith cease to exercise any of the privileges of Membership, and shall cease to be a Member, upon Resolution of the Committee to that effect.

43 (1) A notice of every Defaulter, applying for re-admission, shall, at the discretion of the Committee, be posted without recommenders in The Stock Exchange, at least Twenty-one days, and the Committee shall then take the application into consideration, upon the report of a Sub-Committee, appointed according to Rule 45. (Appendix Form No. 7.)

(2) After a Defaulter has been re-admitted by ballot, he shall be placed in the first or second class as laid down in Rule 46 and posted accordingly.

(3) A Defaulter may be re-admitted without the above notice in any case where upon the report of the Sub-Committee it is proved that all liabilities have been bona fide discharged in full. In such case his name shall be posted as having paid 20s. in the £.

44. Defaulters declared within Four years of their admission

Procedure.

Ballot.

•  
Rejected applications.

Share qualification.

Admission Notice.

Re-election Notice:  
Rules 24 and 25.

Transfer.

Re-admission of Defaulters: Notice.

Class.

Without notice.



Three-fourths majority for Re-admission when required.

as Members, and Defaulters who have been rejected upon Two ballots, can only be re-admitted by a majority of three-fourths in a Committee specially summoned, and consisting of not less than Twelve Members.

Defaulter's share qualification.

45. (1) A Defaulter, who shall have been originally admitted a Member after the 23rd November, 1904, and who shall have parted with his share qualification, shall on re-admission, before again exercising any of the privileges of Membership, become a proprietor of One share in The Stock Exchange. Should a Defaulter who requires a share qualification fail to obtain the same within Six months, his re-admission shall be cancelled. (Appendix Form No. 8.)

Re-admission notice.

(2) The Secretary shall not issue a re-admission notice to such a Defaulter, until it has been reported to him by the Secretary to the Trustees and Managers, that the Defaulter has been duly registered as a proprietor of One share.

Transfer.

(3) A Re-admitted Defaulter who shall transfer the share constituting his qualification, shall forthwith cease to exercise any of the privileges of Membership, and shall cease to be a Member, upon Resolution of the Committee to that effect.

Sub-Committee on Defaulters.

46. (1) Upon any application for re-admission by a Defaulter, a Sub-Committee shall investigate his conduct and accounts; and no further proceedings shall be taken by the Committee with regard to his re-admission, until the Report of such Sub-Committee shall have been submitted, together with a statement as to the Defaulter's estate, signed by himself.

Duties.

(2) The attention of the Sub-Committee shall be directed, (i) To ascertain the amount of the greatest balance of Securities open at any time during the Account, and at the time of failure; the total amount of his business assets; the current balance at his bankers; and whether the transactions were on his own account, or on account of principals, specifying the amount of each case.

(ii) To ascertain the total amount paid to his estate, specifying the sums collected in The Stock Exchange; those received from principals; and those from the Defaulter himself.

(iii) To ascertain the conduct of the Defaulter preceding and subsequent to his failure; and to inquire of the Official Assignees whether any matter, prejudicial or otherwise to the Defaulter's application, has transpired at any meeting of creditors, or has officially come to their knowledge elsewhere.

(iv) To ascertain whether the Defaulter has violated Rule 50.

Classes under which Defaulters are re-admitted.

47. The re-admission of Defaulters shall be in one of two Classes—

The First Class to be for cases of failure arising from the default of principals, or from other circumstances where no bad faith or breach of the Rules and Regulations of The Stock Exchange has been practised; where the operations have been in reasonable proportion to the Defaulter's means or resources, and where his general conduct has been irreproachable.

The Second Class, for cases marked by indiscretion, and by the absence of reasonable caution.

Surrender of names of principals and books.

48. A Defaulter shall not be eligible for re-admission who fails to give up the name of any principal indebted to him, or who has not, within Fourteen days from the date of his failure,

delivered to the Official Assignees or to his creditors, his original books and accounts, and a statement of the sums owing to, and by him, in The Stock Exchange, at the time of his failure.

49. A Defaulter shall not be eligible for re-admission, who shall not have paid from his own resources, independently of his security-money, at least one-third of the balance of any loss that may occur on his transactions, whether on his own account or that of principals; or who, in the event of his debts being less than the amount which his sureties may be called upon to pay, shall not have refunded to the sureties one-third of the amount paid by them.

Minimum  
dividend.

50. A Member who issues or retains a Ticket for Securities, whereby loss is incurred or increased, and who shall be declared a Defaulter in that Account, shall not be eligible for re-admission for at least One year from the date of such default, provided it be proved to the satisfaction of the Committee that he knew himself to be insolvent at the time of issuing or retaining the Ticket.

Member  
issuing or  
retaining  
Tickets when  
insolvent.

51. The surety of a New Member, who at the time of such Member's admission shall have avowed that he was not and would not be indemnified, and who shall subsequently receive any indemnity, shall in the event of the New Member failing within the time of his liability, be compelled to pay to the creditors any sum so received, in addition to the amount for which he originally became surety.

Indemnity of  
sureties.

52. (1) A former Member, not a Defaulter, who shall have ceased to be a Member under Rule 173, or who after ceasing to be a Member from any cause becomes a bankrupt, and who shall have paid 20s. in the £, may apply for re-admission with Two sureties of £300 each.

Re-admission  
of insolvents.

(2) A notice of such application shall, at the discretion of the Committee, be posted in The Stock Exchange at least Twenty-one days, and the Committee shall after consideration of the report of the Sub-Committee appointed under Rule 46, proceed to ballot for his re-admission.

Procedure.

53. A Member wishing to resign his Membership must forward to the Secretary a letter tendering such resignation, and a copy of this letter shall be posted in The Stock Exchange for at least four weeks before the matter is entertained by the Committee.

Resignation.

## PARTNERSHIPS

54. (1) In every year, as soon as possible after the 25th March, a list of partnerships shall be made out by the Secretary.

Partnerships  
List.

(2) In case of a new, or alteration in an old partnership, the same shall be forthwith communicated to the Committee; and no partnership shall be considered as altered or dissolved until such communication be made.

Alteration.

(3) All notices relative to partnerships must, unless otherwise ordered by a Committee specially summoned for that purpose, be signed by the parties, countersigned by the Secretary and posted in The Stock Exchange.

Notices.

(4) A Member who shall enter into any contract with another Member for a loan of money or Securities on terms contingent on or varying with the profits of the business shall be liable as a general partner. Members entering into such contracts shall notify the same as General Partnerships.

Contingent.



Partnerships dissolved by failure.

55. The failure of a firm dissolves the partnership, and, should the members of such firm, when re-admitted, desire to renew the partnership, notice thereof must be given to the Committee in the usual way.

Prohibited partnerships: with Non-Members.

56. (1) A Member of The Stock Exchange shall not enter into partnership with any person who is not a Member, and the decision of the Committee as to what constitutes Partnership within the meaning and intention of the Rules shall be final.

Contingent.

(2) A Member shall not borrow money or Securities from a Non-Member on terms that the lender shall receive a rate of interest varying with the profits or shall receive a share of the profits arising from carrying on the borrower's business.

Between Brokers and Dealers.

(3) Partnerships between Brokers and Dealers are prohibited.

Market partnerships.

57. (1) Members dealing generally together in any particular Securities and participating in the result, shall be held responsible for the liabilities of each other, not only in the Securities in which they are jointly interested, but also in any other description of Securities in which either of them may transact business, unless they shall have forwarded to the Secretary a written notice on Form No. 17 in the Appendix, specifying the particular Securities in which they deal on joint account.

Limitation.

(2) Market Partnerships are only permitted between Members or Firms, who each deal and settle their bargains in their own name.

Number and Market.

(3) No Market Partnership shall consist of more than Two Members or Firms, nor shall such Partnership be carried on in any other Markets than those in which both parties are dealing.

Notices.

(4) All Market Partnerships must be notified to the Secretary and posted in The Stock Exchange.

## CLERKS

Admission of Clerks.

58. (1) A Member desirous of obtaining the admission of an Authorized, Unauthorized or Settling Room Clerk shall apply for the permission of the Committee on one of the Forms 18, 19 or 20 in the Appendix.

Members as Clerks.

(2) A Member who has any arrangement for the sharing of a Commission with another Member shall apply for his admission as a Clerk on Form 18 or 19 in the Appendix.

Members as Office Clerks.

(3) A Member who employs another Member as his Office Clerk shall apply for his admission as a Clerk on Form 19 in the Appendix.

Number Individual.

59. (1) A Member may be permitted to introduce Three Clerks to the House, One of whom may be Authorized; also Two Settling Room Clerks.

Firm.

(2) A Firm may be permitted to introduce Five Clerks to the House, Two of whom may be Authorized; also Six Settling Room Clerks.

Members as Clerks.

(3) Members may be employed as Unauthorized Clerks in excess of the numbers above allowed; and Members may be employed as Authorized Clerks in excess of the numbers above allowed, with a limit of Two for an individual Member or Four for a Firm.

Temporary Clerks.

60. A Member desirous of employing a temporary Clerk in lieu of a Clerk absent at Territorial Training shall apply on one of the Forms 21 or 22 in the Appendix, subject to the Regulations printed thereon.

61. A Member renting a seat in the Decoding Room shall apply for permission to register a Clerk on Form 23 in the Appendix, subject to the Regulations printed thereon.

Decoding  
Clerks.

62. A Member employed as Clerk, whether Authorized or Unauthorized, shall not make any bargain in his own name.

Status of  
Members  
acting as  
Clerks.

63. A Member, who was acting as Clerk to a Defaulter at the time of default, or to a person who has ceased to be a Member by expulsion or under Rule 173, or to a Member under suspension, shall not make any bargain in his own name, nor shall he be admitted as Authorized Clerk to another Member until he has obtained the permission of the Committee at a meeting specially summoned for that purpose.

Clerks of  
Defaulters.

64. A Member applying for the admission of a Clerk must satisfy the Committee—

Member's  
Responsi-  
bility.

(i) That the Clerk is of the requisite age, i.e., for an Authorized Clerk 21, for an Unauthorized or Settling Room Clerk 17.

Age

(ii) That the Clerk would be in all other respects eligible for admission as a Member.

Eligibility.

(iii) That he has obtained a satisfactory Reference from the Clerk's last employer.

Reference.

(iv) That he has a sufficient knowledge of the Clerk's previous career.

Previous  
career.

65 (1) A Member may apply for the admission of a Defaulter as his Clerk, either Authorized or Unauthorized, or to the Settling Room, though the Defaulter may not have complied with Rule 49.

Defaulters as  
Clerks.

(2) A notice of such application shall at the discretion of the Committee be posted in The Stock Exchange for at least Twenty-one days, and the Committee shall then take the application into consideration upon the report of the Sub-Committee appointed under Rule 46.

Notice.

(3) A Resolution allowing such application must be carried by a majority of three-fourths of those present.

Majority.

(4) The foregoing procedure shall not apply in the case of a Defaulter who has previously been readmitted as a Clerk.

Subsequent  
Application.

66. When application is made for the admission as a Clerk of a person who has previously been engaged in business out of The Stock Exchange, the name and address of such person, together with the name of the Member applying for his admission, shall be posted in The Stock Exchange Eight days prior to the application being considered by the Committee.

Clerks  
previously  
engaged in  
business.

67 (1) A Clerk shall not be authorized to transact business until he has been admitted to the House or the Settling Room for Two years, with a minimum service in the House of One year.

Authorized  
Clerks.

(2) A list of Authorized Clerks, distinguishing those who are also Members, and the names of their employers shall be posted in The Stock Exchange.

List.

(3) The Authorized Clerk of a Dealer shall not carry on business in any Market other than that in which his employer deals.

Market.

(4) A Member authorizing a Clerk to transact business shall not be held answerable for money borrowed by the Clerk, without security, unless he shall have given special authority for that purpose.

Borrowing  
without  
Surety.

68. An Unauthorized or Settling Room Clerk, not being a Member shall wear a distinctive Badge in the lapel of his coat, and his employer shall be responsible for the Badge being worn in accordance with the Regulations laid down in Appendix 30.

Badges.



Notice of  
Admission.

69. A Clerk shall not enter the House or the Settling Room, nor shall an Authorized Clerk do a bargain, until his employer shall have received from the Secretary notice of his admission or authorization. (Appendix Forms Nos. 24, 25, 26, 27, and 28.)

Withdrawal.

70. A Member parting with a Clerk or withdrawing his authorization, shall give notice in writing to the Secretary, who shall forthwith communicate the same to The Stock Exchange in the usual manner.

Clerks of  
Defaulters.

71. (1) Clerks of Defaulters are excluded from The Stock Exchange.

Deceased  
Members.

(2) Clerks of deceased Members may, by permission of the Chairman, the Deputy Chairman, or Two Members of the Committee, enter the House for the purpose of adjusting unsettled accounts.

When special  
permission is  
required.

72. No Member shall, without the special permission of the Committee, take into, or continue in, his employment, in any capacity in any business carried on by him as a Member, or any former Member who has been expelled.

## GENERAL RULES

73. The Stock Exchange does not recognize in its dealings any other parties than its own Members: every bargain, therefore, whether for account of the Member effecting it, or for account of a principal, must be fulfilled according to the Rules, Regulations and usages of The Stock Exchange.

Bargains.

74. An application which has for its object to annul any bargain in The Stock Exchange shall not be entertained by the Committee, except upon a specific allegation of fraud or wilful misrepresentation or upon prima facie evidence of such material mistake in the bargain as in their judgment renders the case one which is fitting for their adjudication.

Inviolability of bargains.

75. (1) All disputes between Members not affecting the general interests of The Stock Exchange which arise out of Stock Exchange transactions or are connected with Stock Exchange business and including partnership disputes, shall be referred to the arbitration of a Member or Members of The Stock Exchange: and the Committee will not take into consideration such disputes unless arbitrators cannot be found, or are unable to come to a decision.

Arbitration.

(2) The decision of the Committee as to whether a dispute affects the general interests and, if so, how it shall be dealt with shall be final.

Decision of Committee Final.

(3) A Member shall not without the consent of the Committee attempt to enforce by law any claim arising out of such dispute.

Legal proceedings forbidden.

76. The Committee have power to intervene in cases where the principal of a Member shall attempt to enforce by law a claim against another Member, which is not in accordance with the Rules, Regulations and usages of The Stock Exchange, and will deal with such cases as the circumstances may require.

Committee's intervention.

77. If a Non-Member shall make any claim or complaint against a Member, the Committee shall in the first place consider whether such claim or complaint is fitting for their adjudication, and in the event of their deciding in the affirmative, the Non-Member shall, previously to the case being heard by the Committee, sign the form of Reference No. 31 in the Appendix.

Complaints by Non-Members.

78. A Member of The Stock Exchange is not allowed to advertise for business purposes or to issue Circulars or business communications to persons other than his own Principals.

Advertising prohibited.

79. (1) All members shall, until further order of the Committee, state on all Correspondence relating to the transaction of business on The Stock Exchange and Contract Notes—

Particulars of Firms.

- (i) The name of their firm, if any;
- (ii) The names of all the partners therein; and
- (iii) Where the name of the Member or any partner of foreign birth has been changed since 4th August, 1914, his original name in brackets after his new name.

80. The Committee may refuse to allow a Member or Firm to carry on business under a name which they consider misleading.

Misleading Names.

81. A Broker issuing a contract note shall use such a form as will provide that the words "Member of The Stock Exchange London," shall immediately follow the signature.

Contract note.

82. A Member shall not transact speculative business directly or indirectly, for or with an Official or Clerk in any public or private establishment, without the written consent of his employer.

Speculative business for employees.



Private  
dealings with  
individuals of  
a firm  
prohibited.

Dealings for  
Clerks  
prohibited.

Business for  
Defaulting  
principals.

Double  
Capacity.

Brokers.

Bargain  
between  
Non-  
Members.

Brokerage.

Simultaneous  
orders.

Put through  
by Broker  
prohibited.

Orders  
executed  
with Non-  
Members.

Dealing.

Arbitrage

Dealings in  
dividends  
prohibited.  
Long options  
prohibited.

Holidays.

83. A Member shall not do a private bargain with an individual member of a firm in The Stock Exchange, such bargain being wilfully concealed from the firm.

84. A Member or Authorized Clerk shall not do a bargain with a Clerk, whether a Member or not, for account of such Clerk.

85. A Member shall not transact business for a Principal who, to his knowledge, is in default to another Member, unless such principal shall have made a satisfactory arrangement with his creditors.

86. No Member or Authorized Clerk shall carry on business in the double capacity of Broker and Dealer.

87. A Broker shall not make prices or otherwise carry on the business of a Dealer. He shall not carry on Shunting business; nor shall he carry on Arbitrage business except as authorized under Rule 92.

88. (1) A Broker shall not receive brokerage from more than one Principal on a transaction carried through directly between two Principals, and each contract note shall state that the bargain has been done between Non-Members.

(2) Subject to the provisions of Rule 204(4), Brokerage shall be charged to the Non-Member who initiated the business.

89. (1) When a Broker receives an order from one Principal to buy and from another to sell the same security and executes the two orders simultaneously with the same Dealer, the prices agreed upon must be such as at the time of dealing are believed to be fair to both Principals.

(2) A Broker may not put business through for another Broker.

90. A Broker shall not execute an order with a Non-Member, unless thereby he can deal for his Principal to greater advantage than with a Member. In such a case he shall not receive brokerage from such Non-Member, and each contract note shall state that the bargain has been done between Non-Members. Business which in fact comes under the conditions of this rule shall not be put through a Dealer's book, nor shall any other procedure be adopted in order to bring such business under the provisions of Rule 89.

91. A Dealer shall not deal for or with a Non-Member. He shall not carry on Shunting business; nor shall he carry on Arbitrage business except as authorized under Rule 92.

92. Subject to annual authorization by the Committee a Member, whether Broker or Dealer, may carry on Arbitrage business outside Great Britain and Northern Ireland and the Irish Free State with a Non-Member, but a Broker so authorized shall not make prices or otherwise carry on the business of a Dealer, and a Dealer so authorized shall not act as an agent by executing orders for such Non-Member. (Appendix Form No. 32.)

93. A Member shall not deal in prospective dividends.

94. A Member shall not do an option for a period beyond the seventh ensuing Account Day. [But see Rule 183 (1) (i).]

95. The Stock Exchange will, unless otherwise ordered by the Committee, be closed on the following days, viz.—

1st January,  
1st November,

1st May,  
and on all Bank Holidays.

When the 1st January, 1st May, or 1st November falls on a Sunday, the House will be closed on the day following.

## BARGAINS AND THE SETTLEMENT OF ACCOUNTS

96. (1) The Committee shall at their first meeting in September fix *twenty-four* Account-days for the ensuing year. Account Days.

The Settlement shall consist of

- The Contango-day,
- The Ticket-day,
- The Intermediate Day.
- The Account-day.

Should the Account be so fixed that the Contango-day would in the ordinary course fall on a Saturday, the Contango-day shall be the preceding business day.

97. Forward Bargains and Options for settlement on the Account Days are prohibited in all Securities under the headings, "British Funds" and "Colonial and Provincial Government Securities." British Funds, etc.

98. A Firm or Member dealing either as a Broker or Dealer in Securities of which the Settlement Department undertakes the Settlement shall be a Member of that Department. Settlement Department.

99. Every Firm or Member engaged in active business is required to have a Box in the Settling Room. Settling Room.

100. In case the payment of an instalment on Scrip falls on an Account-day, the settlement of such Scrip shall take place on the previous day. Instalment on Scrip.

101. (1) When no time is specified, Bargains are for the current Account, but those made on the Contango-day are for the ensuing Account. Bargains when no time specified.

(2) When no time is specified, Bargains in New Issues are for the Account fixed in accordance with Rule 160.

102. An offer to buy or sell an amount of Stock, Bonds or Shares at a price named, is binding as to any part thereof that may be a marketable quantity: and an offer to buy or sell Stock, Bonds or Shares when no amount is named, is binding to the amount of— Offers to buy or sell.

£1,000 Stock or Bonds or the equivalent in Foreign Currency				
100 Shares of a market value of less than £1				
50	"	"	"	£1 to £15
10	"	"	"	over £15
100 American Dollar Shares.				

103. On the Account-day, and on the day following, the delivery of Securities shall commence at Ten o'clock. Delivery of Securities.

104. (1) Cheques must be crossed, marked "not negotiable" and drawn to Bearer, with the exception of cheques for Dividends which may be drawn to order. Cheques.

(2) Cheques must be passed through the Clearing House, unless the Drawer consent to their being otherwise presented. Clearing House.

(3) If a Member require Bank Notes in payment for Securities sold, without having made such stipulation at the time of making the bargain, he must give notice to his Buyer to that effect before Half-past Eleven o'clock on the day of delivery, and payment shall be made upon delivery of the Securities, or the Stock receipt. Demand for Bank Notes.

(4) A Member cannot demand Bank Notes in payment of Differences. Differences.



Reference to  
Non-Member  
for payment.

Seller may  
require  
payment from  
his Buyer.

Security for  
Loans.

Continuations.

Making-up  
Prices.

Binding.

Dispute.

List.

Declaration of  
Options.

When House  
closed.

For Contango-  
Day.

Making  
Securities  
Ex-dividend  
Government  
Securities.

Transfer.

105. A Member shall not be obliged to take a reference for payment to a Non-Member; nor shall he be obliged to pay a Non-Member for Securities bought in The Stock Exchange.

106. A Seller has the right to demand payment for securities from the Member who passed him the Ticket; and in case the Seller apply to the issuer of the Ticket, and fail to obtain payment, or receive a cheque which is dishonoured, the Member from whom he received the Ticket shall make immediate payment.

107. A lender is not entitled to place beyond his control Securities received as security for a Loan; and may, after reasonable notice, and upon payment of the principal together with interest up to the time for which the Loan was originally made, be required to return the identical Bonds, or to re-transfer the Securities given as security for such Loan. This liability does not apply to a Member who has taken in Securities upon continuation.

108. Continuations are Bargains and not Loans: they must be effected at the Making-up price, or at the then existing Market Price.

109. (1) The Clerk of the House shall fix the Making-up prices of all securities included in The Stock Exchange Official List of Making-up Prices, by taking the actual Market Price at Half-past Eleven o'clock on each of the Three days preceding the Account-day.

(2) No Making-up shall be binding unless at the Official Making-up Price or where none is fixed at the then existing Market Price.

(3) In case of dispute as to the Making-up Price, or of any omission in fixing the same, the Clerk of the House shall act upon the decision of Two Members of the Committee.

(4) The Making-up Prices so fixed shall be published in The Stock Exchange Official List of Making-up Prices under the authority of the Committee and subject to the Regulations contained in Appendix 33.

110. (1) The time for the Declaration of Options is a Quarter before Three, or on Saturday a Quarter before One, on the day before the Contango-day.

(2) If the day for the Declaration of Options should be one on which The Stock Exchange is closed, they shall be declared on the preceding business day.

(3) In the case of Options done for and declared on the Contango-day the bargains, both for the firm stock and the Option stock shall be for settlement on the Settling-day of the following Account.

111. (1) Government and Corporation Securities, Inscribed, Registered, Scrip, Certificates or Bonds, shall be made ex-dividend on the day after that on which the Books close for the payment of the dividend, except Victory Bonds which shall be made ex-dividend ten days prior to the payment of the dividend.

(2) Securities deliverable by Deed of Transfer, except Securities dealt in in the Mining Markets and the Oil, Tea and Coffee, and Rubber Sections of the Miscellaneous Market and Registered Debentures, shall be made ex-dividend on the Account-day following the date on which the dividend may have been declared, provided the Transfer Books have already been closed for the payment of the dividend. If the Transfer Books are not closed until after the dividend has been declared, the securities shall be made ex-dividend on the Account-day following the closing of the Books.

(3) Securities dealt in in the Mining Markets, and the Oil, Tea, Coffee, and Rubber Sections of the Miscellaneous Markets shall be made ex-dividend on the Account-day following the payment of the dividend.

Mining, Oil,  
Tea and Coffee  
and Rubber.

(4) Securities to Bearer and Registered Debentures shall be made ex-dividend on the day when the dividend is payable, but Securities to Bearer with Coupons payable only abroad may be made ex-dividend on the Account-day which shall allow the necessary time for the transmission of the Coupon for collection.

Bearer.

(5) American Shares, other than shares dealt in in the Mining Markets, shall be made ex-dividend on the Account-day preceding the closing of the books for the payment of the dividend, if not more than Six days intervene, otherwise on the Account-day following the closing of the books.

American.

112. (1) In the settlement of all bargains except those coming under the provisions of Rule 139 (2), dividends are to be accounted for at the net amount receivable after deduction of Income Tax.

Income Tax.

(2) Accrued interest on Securities excepted in Rule 138 shall be paid without deduction of Income Tax.

Accrued  
Interest

113. (1) Bargains must be settled in Securities which have not been drawn.

Drawn  
Securities.

(2) In case of the erroneous delivery of any Drawn Securities, the Buyer, on receipt of Undrawn Securities, and on allowance being made for any drawing or dividend of which he may have lost the benefit, shall deliver such Securities back to the person who held them at the time of the drawing, or shall pay to him any proceeds received from such drawing, provided the said Securities or the proceeds thereof be traced to, and remain in the possession and under the control of such Buyer, all intermediate Members being released from liability.

Buyer's  
Rights.

(3) No claim by the Seller in respect of the erroneous delivery of Drawn Securities will be entertained by the Committee unless made within Nine calendar months from the day of delivery.

Seller's  
Rights.

(4) In the case of Securities bought before but delivered on or after the date of the drawing the seller shall pay to the buyer the market value of the drawing, to be determined in case of dispute by the Secretary of the Share and Loan Department.

Buyer's  
Rights.  
Market  
Value of  
drawing.  
Rights.

114. (1) The Buyer is entitled to new Securities issued in right of old, provided that he specially claim the same in writing from the Seller not later than Four o'clock, or One o'clock on Saturday, on the day preceding the latest day fixed for the receipt of applications in London.

(2) Notwithstanding the provisions of the above Clause, the Seller if he be in possession of the new Securities shall be responsible to the Buyer for the same, although claimed by him later than Four o'clock on the above-named day and should he not be in possession of the new Securities he is bound to render every assistance to the Buyer in tracing the same.

Responsibility.

(3) (a) Claims for rights are claims for the new Securities issued in right of old, but when practicable are to be settled by Letters of Renunciation.

Letters of  
Renunciation.

(b) Claims for Renunciation Letters are invalid.

(c) A member shall not be required to accept Letters of Renunciation after Two o'clock, or Twelve o'clock on Saturday, on the latest day fixed for the receipt of applications in London.

(4) Where Letters of Renunciation are not issued, all payments as and when required by the Company are to be advanced to the Seller by the Buyer, who may demand a receipt for the

Payments.



same, such payments being for Securities to be delivered at the Account fixed in accordance with Rule 160.

Temporary  
Settlement.

(5) If the new Securities cannot be obtained by Letters of Renunciation, the Secretary of the Share and Loan Department, subject to the approval of the Chairman or Deputy-Chairman or Two Members of the Committee, shall fix a price at which the new Securities may be temporarily settled, which may be deducted by the Buyer from the purchase money of the old Securities until the Account fixed in accordance with Rule 160.

Rights on  
Option Stock.

115. (1) When Securities on which Options are open are made "Ex Rights" an official price will on application to the Secretary of the Share and Loan Department be fixed for the Rights.

Valuation.

(2) All Rights in respect of Options shall be settled by the allowance of such valuation in the Option price, unless the Member who has given for the call or taken for the put shall give notice in writing on or before the day the Securities are made "Ex Rights" that he will claim the new Securities and accept delivery if the Option is exercised.

### GOVERNMENT AND CORPORATION INSCRIBED OR REGISTERED STOCKS, ETC.

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Times for  
Delivery.

116. (1) Stock receipts must be delivered by Half-past Two o'clock, or Half-past Twelve on Saturdays.

Under  
Rule 106.

(2) If a deliverer elect under Rule 106 to deliver a Stock receipt to the Member with whom he has dealt, such Member not being the issuer of the Ticket, he shall deliver such receipt by a Quarter-past Two o'clock, or a Quarter-past Twelve on Saturday.

Deed Stock  
and Bearer.

(3) British Government Securities transferable by Deed and British and India Government and Corporation Securities to Bearer must be delivered before a Quarter-past Two o'clock, or before Twelve o'clock on Saturday.

Bank Stock.

117. The Seller of Bank Stock shall pay the transfer fees and the Buyer may require as many transfers as there are even thousand pounds Stock in the sum dealt in.

Exchequer  
Bonds, etc.

118. Bargains in Exchequer Bonds and in Stock Certificates are for Bonds and Stock Certificates not filled up to order.

Inscribed  
Stock.

119. A Buyer of British Government Stocks is entitled to delivery of Inscribed Stock unless otherwise arranged.

### SECURITIES DELIVERABLE BY DEED OF TRANSFER

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Regularity of  
documents.

120. (1) The Seller of Securities is responsible for the genuineness and regularity of all documents delivered.

Disputed title  
after  
registration.

(2) When an official Certificate of registration of such Securities has been issued, the Committee will not, unless bad faith is alleged against the Seller, take cognizance of any subsequent dispute as to title, until the legal issue has been decided, the reasonable expenses of which legal proceedings shall be borne by the Seller.

Dividends.

(3) The Seller is responsible for such dividends as may be received unless an unreasonable time has been taken by the

transferee to execute and lodge the documents for registration.

121. The Committee will not, except under special circumstances, interfere in any question arising from the delivery of Securities by transfer in blank.

Blank  
transfers.

122. (1) The Buyer, who takes up Securities deliverable by deed of transfer, shall issue a Ticket, with his name as payer of the purchase-money, which Ticket shall contain the amount and denomination of the Security to be transferred; the name, address and description of the transferee in full; the price, the date and the name of the Member to whom the Ticket is issued. Each intermediate Seller, in succession, to whom such Ticket shall be passed, shall endorse thereon the name of his Seller.

Procedure on  
Ticket-days.

(2) The buyer shall issue his Ticket before Three o'clock on the Ticket-day.

Time for  
Issue.

(3) All Tickets representing Securities which, at the time, are subject to arrangement by the Settlement Department, and all Tickets representing Securities dealt in in the Mining Markets or in the Rubber Section of the Miscellaneous Market which are included in "The Stock Exchange Official List of Making-up Prices" shall be passed through the accounts at the Making-up Price of the Contango-day, and the Securities paid for at that price; but the consideration money in the deed must be at the price on the Ticket.

Settlement  
Department,  
etc., Securities.

(4) The passing of Tickets shall commence at Ten o'clock.

Passing of  
Tickets.  
Time.

(5) Tickets may be issued and left at the Office of the Seller on the Contango Day (subject to Rule 149) and up to Three o'clock on the Ticket-day. After this hour all tickets must be passed in the Settling Room.

At Office.

(6) Tickets may be placed in the Boxes in the Settling Room up to Eleven o'clock on the Account-day.

In boxes.

(7) (a) A member receiving a Ticket from the Issuer after Three o'clock on the Ticket-day shall note the fact on the back of the Ticket.

Endorsement  
of Time.

(b) For securities which are subject to arrangement by the Settlement Department a Member receiving a Ticket after Two o'clock on the Intermediate-day or at any time on any subsequent day shall mark the date and the exact time at which such Ticket was received.

(c) For securities which are not subject to arrangement by the Settlement Department a Member receiving a Ticket after Six o'clock on the Ticket-day or at any time on a subsequent day shall mark the date and exact time at which such Ticket is received.

(8) Members omitting to note the time thus fixed may become liable for losses occasioned by Selling-out.

Liability.

123. (1) A Member splitting a Ticket shall retain the original Ticket, and, should he fail to do so, he will be required to trace it in case of Selling-out.

Split Tickets.

(2) Split Tickets must bear the name of the issuer of the original Ticket, and must state by whom the Ticket is split.

Names.

(3) A Member splitting a Ticket shall pay any increased expense caused by such splitting.

Increased  
Expenses.

(4) A claim for loss on a Split Ticket shall not be valid unless made by the original Claimant within Three Months after the date of the Ticket, but the Member splitting the Ticket shall be liable to intermediate Claimants for a period of Four Months.

Limit of  
Time.



Settlement  
Department.

(5) The liability of Members to the Settlement Department for losses on Split Tickets collected by the Department shall extend for a period of Six Months from the date of the Ticket.

Antedated  
or undated  
Tickets.

124. A Member not refusing an Antedated Ticket, when tendered as such, takes it with all its liabilities; but if it be passed as an ordinary Ticket, the liabilities remain with the Member putting such Ticket again into circulation. A Member holding an undated Ticket shall not be liable for any loss arising from the Securities having been bought in, unless such Ticket has been Seven days in his possession.

Alteration or  
detention of  
Tickets.

125. A Member who makes an alteration in, or improperly detains a Ticket, shall make good any loss that may occur thereby.

Price on  
Ticket.

126. (1) The deliverer shall cause the Securities to be transferred at the price marked upon the Ticket.

Power of  
refusal.

(2) A Member shall not be compelled to take a Ticket at a price not current in the Market during the Account, unless the bargain represented by such Ticket shall have been made within the Two preceding Accounts.

Pending Calls.

127. The deliverer may, previous to delivery, pay any call made on registered Securities, although not due, and claim the amount of the issuer of the Ticket.

Stamps.

128. (1) The Buyer of Securities shall pay the stamp duty and also the transfer registration fee in cases where it has been paid in advance by the Seller.

Loan.

(2) In the case of a Loan, the borrower shall pay the nominal consideration stamp, the registration fee and the mortgage stamp.

Transfers to  
Dealers.

(3) A Dealer requiring a Transfer to himself or his nominee under the provisions of Section 42 of the Finance Act, 1920, shall issue a numbered Ticket bearing a certificate in the following terms signed by the Dealer—

“Delivery on a Ten Shilling Stamp under the Finance Act, 1920, Section 42.

“I (We) certify that the purchase referred to in this Ticket was effected by me (us) in the ordinary course of my (our) business as a Dealer(s) on The Stock Exchange.”

Split  
Tickets.

Any Split Ticket must bear a copy of the Certificate.

Supplement-  
ary Stamp.

The Transfer when delivered must bear the Ten Shilling Stamp and either the Supplementary Stamp required by the Act, or a signed endorsement by the delivering Broker to the following effect—

“I (We) hereby declare that this Transfer was delivered by me (us) to  
on the  
(Signed)

*Members of The Stock Exchange.*

Certificates or  
Certification.

129. (1) The Buyer of Securities may refuse to pay for a transfer deed unaccompanied by the Certificate, unless it be officially certified thereon that the Certificate is at the office of the company. But if the transfer deed be perfect in all other respects, the Securities must not be bought in until reasonable time has been allowed to the Seller to obtain the certification required.

Share and  
Loan  
Department.

(2) If the Seller have a larger Certificate than the amount of Stock conveyed, or only one Certificate representing Stock conveyed by two or more transfer deeds, the Certificate may be deposited with the Secretary of the Share and Loan Department of The Stock Exchange, who shall forward it to the

office of the company, and certify to that effect on the transfer deeds, which shall then be a valid delivery. No person is to look to the Trustees and Managers or Committee of The Stock Exchange, as being liable for the due or accurate performance of those duties, the Trustees and Managers and Committee holding themselves, and being held, entirely irresponsible in respect of the execution, or of any mis-execution, or non-execution, of the duties in question.

130. On the morning of the Account-day all unsettled bargains shall be brought down and temporarily adjusted at the Making-up price of the Contango-day.

Temporary  
adjustment  
of accounts.

131. (1) A Member shall not be required to pay for Securities presented after a Quarter before Two o'clock, or after Twelve o'clock on Saturday.

Time for  
Payment.

(2) If a deliverer elect to settle with his immediate Buyer, under the provisions of Rule 106, he shall deliver his Securities before Half-past Twelve o'clock, or Eleven o'clock on Saturday, but Intermediaries on the trace are bound to pay their Sellers up to One o'clock, or Half-past Eleven on Saturday.

Under  
Rule 106.

132. The Buyer is entitled to deduct the dividend when paying for Securities on which the dividend has been declared and in respect of which the Transfer Books are closed at the date of delivery.

Deduction of  
Dividend.

133. In cases where dividends are declared payable in a foreign currency the Secretary of the Share and Loan Department shall fix a price for the dividend in Sterling money, which shall be posted in The Stock Exchange, and the dividend shall be accounted for at such price.

Dividends in  
Foreign  
Currency.

## SECURITIES PASSING BY DELIVERY

134. (1) The Seller is responsible for the genuineness of the Securities delivered, and in case of his death, failure or retirement from The Stock Exchange, such responsibility shall attach to each Member in succession, through whose hands the Securities, or the Ticket representing such Securities, shall have passed.

Genuineness of  
Securities.

(2) The deliverer of Securities on Tickets is required to apportion such Securities to each Ticket at the time of delivery, and the taker of Securities, in order to secure his right under this Rule, shall keep such Tickets and the numbers of the Securities to which they were respectively apportioned, or, in the case of Settlement Department Tickets, the numbers of such Tickets.

Apportion-  
ment to  
Tickets.

135. (1) A Bond or Certificate is to be considered perfect, unless it be much torn or damaged, or a material part of the wording be obliterated. The Committee will not take cognizance of any complaint in respect of a Bond or Certificate alleged to have been delivered in a damaged condition, or deficient in or with irregular Coupons, should such Bond or Certificate be detained by the Buyer more than Eight days after the delivery, unless it can be proved that the Member passing it was aware of its being imperfect.

Damaged  
Bonds, etc.

(2) A Member shall not be required to accept delivery of American Shares or Registered Bonds in names requiring legal or other documents to be attached in order to effect transfer.

American  
Certificates.  
Documents  
required.

(3) The Committee will not take cognizance of any complaint in respect of the irregularity in the endorsement of an American



Share Certificate, should such certificate be detained by the Buyer more than Three months after delivery, unless it can be proved that the Member passing it was aware of the irregularity.

Denomination  
Deliverable.

136. (1) A Member shall not be required to accept the delivery of a Certificate of American Shares representing a larger number than :—

100 Shares up to and including \$5 each,  
50 Shares up to and including \$25 each,  
20     "     \$50 each,  
10     "     any other denomination,

nor an American Bond of a larger amount than \$1,000.

Smaller  
Certificates.

(2) Smaller Certificates or Bonds must be of such denomination as to be deliverable in the above amounts.

Tickets.

137. (1) On the Ticket-day between One and Four o'clock, Tickets shall be passed at the Making-up price of the Contango-day.

Time of issue.

(2) Tickets shall not be issued later than Three o'clock on the Ticket-day.

Amounts.

(3) Tickets must bear distinctive numbers and be for the following amounts, viz.—

£1,000 Stock, or multiples of £1,000, up to £5,000, or the equivalent in Foreign Currency.

5 Shares, or multiples thereof, up to 100.

Tickets for £500 Stock may be passed for bargains or balances of that amount.

Smaller amounts must be settled without Tickets.

Splitting.

(4) Tickets shall not be split, except in the Settlement Department.

Endorsement.

(5) A Member is required to endorse on the Ticket the name of the Member to whom it is passed.

Time under  
Rule 106.

(6) Sellers shall accept Tickets, but if a deliverer elect to settle with his immediate Buyer, under the provisions of Rule 106, he shall deliver his Securities before Half-past Twelve o'clock, or Eleven o'clock on Saturday. Intermediaries on the trace are bound to pay their Sellers up to One o'clock, or Half-past Eleven on Saturday.

Release of  
Intermediary.

(7) The holder of a Ticket, who shall allow Two business days including the Account Day to elapse without delivering the Securities, releases his Buyer from any loss in consequence of the declaration of any Member as a Defaulter.

Accrued  
Interest.

138. Bargains in Bonds and Debentures include the accrued interest in the price, except in the case of British and Colonial Treasury and Exchequer Bonds or Bills, Rupee Paper, Indian Railway Debentures, and certain Securities of a like character which are dealt in so that the accrued interest up to the day for which the Bargain is done is paid by the Buyer.

Coupons.

139. (1) Securities sold cum Coupon must be delivered with the Coupon unless they have been made ex Coupon before or on the date for the completion of the bargain.

Compensation.

(2) Except as provided above, should a Bond sold cum Coupon be delivered without the Coupon the seller must compensate the buyer by the payment of

(a) In the case of Coupons payable only in London the value of the Coupon less Income Tax.

(b) In the case of Coupons payable abroad, or both in London and abroad, the market value of the Coupon on the date for which the bargain is done without deduction of Income Tax,

in case of dispute the market value being fixed by the Secretary of the Share and Loan Department, provided always that no securities shall be a good delivery without the Coupon before they are made "ex."

140. In the case of dividends payable only abroad, the Secretary of the Share and Loan Department shall fix a price for the Dividends or Coupon in sterling money, which shall be posted in The Stock Exchange, and the dividend shall be accounted for at such price.

Valuation.  
Dividends  
Payable  
Abroad.

141. Eleven clear days between the day of delivery and that of the closing of the books of the company shall be allowed by the Seller to the Buyer of "American" Shares, in order to afford time for transmission of the Certificates to Offices at or East of Chicago.

American  
Certificates.  
  
Time for  
transmission.

142. On the Account-day, all unsettled bargains shall be brought down and temporarily adjusted, at the Making-up price of the Contango-day.

Temporary  
adjustment  
of Accounts.

143. (1) A Member shall not be required to pay for Securities presented after a Quarter before Two o'clock or after Twelve o'clock on Saturday. On the Account-day the holder of a Ticket must deliver before One o'clock.

Time for  
payment.

(2) The Buyer shall pay for such portion of Securities as may be delivered within the prescribed time.

Part delivery.

## BUYING-IN AND SELLING-OUT

144. Buying-in or Selling-out must be effected publicly by the officials of the Buying-in and Selling-out Department appointed by the Committee for General Purposes, who shall trace the transaction to the responsible Member and claim the difference thereon.

Official  
Department.

145. The charges for Buying-in and Selling-out shall be those authorized by Appendix 39. Full commission to be charged on the first attempt and half commission on every subsequent attempt.

Charges.

146. The Committee may suspend the Buying-in of Securities, when circumstances appear to them to make such suspension desirable in the general interest. The liability of intermediaries shall continue during such suspension, unless otherwise determined by the Committee.

Suspension of  
Buying-in.

147. Securities shall not be bought-in while they are known to be out of the control of the Seller for the payment of calls, or the receipt of interest, dividends or bonus.

When  
Securities  
may not be  
bought-in.

148. Inscribed Stock, not subject to an *ad valorem* Stamp Duty, bought for a specified day and not then delivered, may be bought-in without notice on the following day at Eleven o'clock, and the Member causing the default shall pay any loss incurred.

Buying-in  
Inscribed  
Stock.

149. (1) If Securities deliverable by Deed of Transfer or Inscribed Stock subject to an *ad valorem* Stamp Duty are not delivered within Ten days, the issuer of the Ticket may buy-in the same against the Seller on the Tenth day after the Account-day, or on any subsequent day.

Buying-in  
Registered  
Securities.



Companies preparing their own Transfers.	(2) In the case of Companies which prepare their own transfers, Securities may be bought-in on the Eleventh day after the earliest date on which a transfer can be procured, or on any subsequent day.
Notice.	(3) One hour's public notice of such Buying-in must be posted in The Stock Exchange, except on Saturday, when a notice of three-quarters of an hour only shall be necessary ; the notice to be posted not later than Half-past Twelve o'clock, or Half-past Eleven o'clock on Saturday.
Time.	(4) Buying-in shall take place between Half-past One and Three o'clock, and on Saturday between a Quarter-past Twelve and One o'clock.
Name.	(5) The name into which the Securities are to be transferred must be stated in the order to buy-in, if required by the Manager of the Buying-in and Selling-out Department.
Liability.	(6) The loss occasioned by such Buying-in shall be borne by the ultimate Seller, unless he can prove that there has been undue delay in the passing of the Ticket on the part of any Member who shall in that case be liable.
Cash Bargains.	(7) Securities bought for any day except the Account-day and not delivered by Half-past Two, or Twelve o'clock on Saturday, may be bought-in on the following or any subsequent day without notice, and any loss occasioned by such Buying-in shall be borne by the Seller.
Further Buying-in.	(8) Securities bought-in and not delivered by One o'clock on the following day, or by Twelve o'clock on Saturday, may be again bought-in for immediate delivery without further notice, and any loss shall be paid by the Member causing such further Buying-in.
Release of Intermediaries.	150. (1) The issuer of a Ticket who shall allow Two business days from the Buying-in day to elapse without Buying-in or attempting to buy-in the Securities, shall release the Seller from all liability in respect of the non-delivery of the Securities, unless he shall have waived his right to buy-in at the request, or with the consent of his Seller ; and the holder of the Ticket shall alone remain responsible to such issuer for the delivery of the Securities.
Companies preparing their own Transfers.	(2) In the case of Companies which prepare their own transfers the intermediate Seller shall be released Thirteen clear days after the earliest day on which a transfer can be procured.
Liability.	(3) The liability of issuers and holders of Tickets is not affected by the fact that intermediaries have been released by lapse of time.
Buying-in Bearer Securities.	151. (1) Securities passing by delivery which have been bought for the Account-day, and are not delivered by a Quarter before Two o'clock, may be bought-in on the following, or any subsequent day, and any loss occasioned by such Buying-in shall be borne by the Seller.
With Notice.	(2) One hour's public notice of such Buying-in must be posted in The Stock Exchange, except on Saturday, when a notice of three-quarters of an hour only shall be necessary ; the notice to be posted not later than Half-past Twelve o'clock, or Half-past Eleven o'clock on Saturday.
Without Notice.	(3) If such Securities are bought for any day except the Account-day and not delivered by a Quarter before Two o'clock or by Twelve o'clock on Saturday they may be bought in

on the same, or any subsequent day without notice, and any loss occasioned by such Buying-in shall be borne by the Seller.

(4) Buying-in shall take place between Half-past One and Three o'clock, and on Saturday between a Quarter-past Twelve and One o'clock. Time.

(5) The loss occasioned by such Buying-in shall be borne by the Member who shall not have delivered the Securities by a Quarter before Two o'clock on the previous day, or by Twelve o'clock on Saturday. Liability.

(6) Securities bought-in, and not delivered by One o'clock on the following day, or by Twelve o'clock on Saturday, may be again bought-in for immediate delivery without further notice, and any loss shall be paid by the Member causing such further Buying-in. Further Buying in.

152. A Member who shall allow Two business days to elapse without buying-in or attempting to buy-in Securities passing by delivery releases his Seller from any loss in consequence of the declaration of any Member as a Defaulter, unless he shall have waived such right at the request, or with the consent of the Seller. Release of Intermediaries.

153. (1) In case the Official shall not succeed in executing an order to buy-in, the notice of such Buying-in shall remain on the General Notice Board, and the Official shall as long as the order remains in force daily renew the attempt to buy-in, and when so instructed shall bid for the stock. Renewed attempts.

(2) A holder of a ticket shall before Eleven o'clock on the buying-in day, notify the payer that he holds it. Notification.

154. (1) The Seller of Inscribed Stock for a specified day, who shall not receive a Ticket by Half-past Twelve o'clock, or a Quarter-past Twelve o'clock on Saturday, may sell out against the Buyer. Selling-out Inscribed Stock.

(2) If such Ticket shall not have been regularly issued before Eleven o'clock, the issuer thereof shall be responsible for any loss occasioned by the Selling-out. Should the Ticket have been regularly put in circulation, the holder at Half-past Twelve o'clock, or a Quarter-past Twelve o'clock on Saturday shall be liable. Liability.

155. (1) The deliverer of Securities deliverable by deed of Transfer, who shall not receive a Ticket by Half-past Two o'clock on the Intermediate-day, may sell out such Securities up to Three o'clock, or One o'clock on Saturday, on that day or any subsequent day. Selling-out Registered Securities.

(2) In the case of a Bargain for a specified date the deliverer who shall not receive a Ticket by Half-past Two (or Half-past Twelve on Saturdays) on the day before such specified date may sell out the Securities up to Three o'clock (or One o'clock on Saturdays) on that day or any subsequent day. Specified Day.

(3) If the Security be one of those undertaken by the Settlement Department, written notice stating from whom a Ticket is required must be given to the Department at least One hour before such Selling-out, and in no case shall such Securities be sold out before Twelve o'clock. Notice to Settlement Department.

(4) If a Ticket shall not have been regularly issued before Three o'clock on the Ticket-day the issuer thereof shall be responsible for any loss occasioned by Selling-out. Liability. Late Ticket.

(5) Should a Ticket have been regularly put into circulation, the holder thereof at the following time shall be responsible for Liability.



Selling-out unless he can prove undue delay in the passing of the Ticket—

Selling-out on Intermediate-day.

(a) For Selling-out on the Intermediate-day—the holder of the Ticket at Two o'clock on that day.

Account-day Settlement Department Securities.

(b) For Selling-out on the Account-day—

(1) Of Securities which are subject to arrangement by the Settlement Department the holder of the Ticket at Three o'clock on the Intermediate-day, unless such Ticket was in the Settlement Department at Three o'clock, in which case the holder at Five o'clock shall be liable.

Other Securities.

(2) Of Securities not subject to arrangement by the Settlement Department, the holder of the Ticket at Twelve o'clock on the Intermediate-day.

Selling-out After Account-day.

(c) For Selling-out on any day after the Account-day—the holder of the Ticket at Three o'clock on the previous day, or One o'clock on Saturday.

Release of Intermediaries.

156. Should the deliverer of securities deliverable by deed of Transfer allow Two business days from Three o'clock on the Intermediate-day to elapse without availing himself of his right to sell out, his Buyer shall be relieved from all loss in cases where the Ticket has not been passed in consequence of the declaration of any Member as a Defaulter. If a Seller does not deliver securities within Two business days from the Buying-in day the intermediate Buyer from whom he received the Ticket shall be released, and the issuer thereof shall alone remain responsible for the payment of the purchase-money.

Tickets for sold-out Securities.

157. When Securities are sold out, if a Ticket be not given within half an hour after the time of sale, the transfer may be made into the name of the Buyer.

Selling-out Bearer Securities.

158. A Member, who has sold Securities passing by delivery for a specified day, may sell out the same on that day, if the Buyer is not prepared to pay for them by a Quarter before Two, or Twelve o'clock on Saturday, and the Buyer shall be liable for any loss incurred.

## NEW ISSUES AND OFFICIAL QUOTATIONS

Committee's Permission.

159. (1) No dealings whether for cash or for the account will be allowed in any new issue unless allowed by the Committee or excepted from this rule under Appendix 34*d* or 34*e* (*vide* Appendix 34).

Settlement.

(2) Dealing in Results is not allowed.

160. The Settlement at which bargains for the account in new issues are to be completed will be announced when permission for dealings is given, or by subsequent notice.

Dealing in Vendors' Securities.

161. The Committee will not allow dealings in Shares or Securities issued to the Vendors, credited as fully or partly paid, until Six months after the date on which permission was given for dealings in the Shares or Securities of the same class subscribed for by the public, but this does not necessarily apply to reorganizations or amalgamations of existing Companies, or to cases where no Public Shares are issued, or to cases where the Vendors take the whole of the Shares issued for cash. (*This rule was deleted by the Committee on 26th July, 1926.*)

Official Quotations.

162. (1) The Committee may order the Quotation in the Official List of any security of sufficient magnitude and importance.

(2) Applications for Quotation must be made to the Secretary of the Share and Loan Department and must comply with such conditions and requirements as may be ordered from time to time by the Committee except in cases where the Committee may determine to waive one or more of such conditions or requirements (*vide* Appendix 35). Applications.

(3) Three days' public notice must be given of every application. Notice.

(4) A Broker, a Member of The Stock Exchange, must be authorized to give the Committee full information as to the Security and to furnish them with all particulars they may require. Broker.

163. Securities issued to Vendors credited as fully or partly paid shall not be quoted until Six months after the date on which permission was given for dealings in the Securities of the same class subscribed for by the public, nor unless a quotation for the latter is also granted. (*This rule was deleted by the Committee on 26th July, 1926.*) Quotation of Vendors' Securities.

## OFFICIAL LIST AND MARKING OF BARGAINS

164. (1) A List of Securities admitted to Quotation shall be published under the authority of the Committee. Official List.

(2) A record of Bargains in Securities which have not received a Quotation in The Stock Exchange Official List shall also be published under the authority of the Committee, but the Committee may order that the bargains in certain Securities be marked but not recorded. Record.

(3) No list or record shall be published and sold by a Member without the sanction of the Committee. Unauthorized Lists.

165. Bargains may be marked between 10.45 and 3.30 (1 o'clock on Saturdays). Time for Marking Bargains.

166. Bargains marked will be officially recorded unless specially ordered otherwise by the Chairman, Deputy-Chairman or two Members of the Committee. Special Omissions.

167. The following Bargains shall be marked with distinguishing signs— Signs.

‡ Bargains at special prices.

△ Bargains done with or between Non-Members.

Φ Bargains done during unofficial hours or on the previous day.

168. Bargains should be marked in the order in which they are made, but the Clerks of the House may, with the concurrence of a Member of the Committee, mark omitted bargains in the order in which they occurred, upon an application signed by the Buyer and the Seller stating the amount, the time when and the price at which such bargains were made; and such application shall be reported to the Committee at their next meeting. Bargains omitted to be marked.

169. (1) Complaints as to Marks may be lodged with the Clerks of the House at any time. Complaints Marks.

(2) Objections to Quotations in the List must be lodged with the Clerks of the House not later than Fifteen minutes before the time fixed for the closing of the House. Objections to Quotations.

(3) Complaints and objections will in the first instance be considered by the Chairman, the Deputy-Chairman or two Members of the Committee. Procedure.



## FAILURES

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Official  
Assignees.

170. (1) Two Members shall be appointed annually by the Committee, to act as Official Assignee and Deputy Official Assignee respectively, hereinafter called the Official Assignees, whose duty it shall be to obtain from a Defaulter his original books of account, and a statement of the sums owing to and by him, to attend Meetings of creditors and to summon the Defaulter before such Meetings; to enter into a strict examination of every account; to investigate and report to the Committee forthwith any bargains found to have been effected at unfair prices; and to manage the estate in conformity with the Rules, Regulations and usages of The Stock Exchange.

Security.

(2) Each Official Assignee shall find security amounting to £1,000 from Two or more Members of The Stock Exchange. In the event of any default or misappropriation by any Assignee of funds or property entrusted to his care, or of any other act of dishonesty on his part, each of his Sureties shall pay, under direction of the Committee, such sum as he shall have guaranteed.

Declaration of  
Defaulters.

171. (1) A Member unable to fulfil his engagements shall be publicly declared a Defaulter by direction of the Chairman, Deputy-Chairman or any Two Members of the Committee, and thereby ceases to be a Member.

Time.

(2) The Request for such declaration shall be handed to the Secretary not later than a Quarter to Three o'clock, or Half-past Twelve on Saturday, and the declaration shall be forthwith announced to The Stock Exchange. A Declaration shall not be announced before a Quarter-to-Eleven o'clock.

By Order  
of the  
Committee.

(3) The Committee may order a Member who fails to meet an obligation to a Member or non-Member arising out of a Stock Exchange transaction to be declared a Defaulter.

Deed of  
Assignment.

172. A Member who has been declared a Defaulter shall forthwith execute and deliver to the Official Assignee a Deed of Arrangement in the form of Appendix 37.

Insolvency.

173. A Member who may fail to pay the fees due to the Trustees and Managers, or who may have a Receiving Order in Bankruptcy made against him or be adjudicated a Bankrupt or who may be proved to be insolvent although he may not be at the same time a Defaulter in The Stock Exchange, shall cease to be a Member upon resolution of the Committee to that effect.

Private  
failures.

174. When a Member shall give private intimation to his creditors of his inability to fulfil his engagements, the creditors shall not make any compromise with such Defaulter, but shall immediately communicate with the Chairman, Deputy-Chairman or Two Members of the Committee, in order that the Member in default may be immediately declared; and in case the Committee shall obtain knowledge of any private failure, the name of the Defaulter shall be publicly declared.

Compromises.

175. A Member conniving at a private failure, by accepting less than the full amount of his debt, shall be liable to refund any money or Securities received from a Defaulter, provided such Defaulter be declared within Two years from the time of such compromise, the property so refunded being applied to liquidate the claims of the subsequent creditors. Any arrangement for settlement of claims, in lieu of *bona fide* money payment

on the day when such claims become due, shall be considered as a compromise, and subject to the provisions of this rule.

176. (1) In the event of a default the Regulations in Appendix 36 shall apply. Regulations.

(2) In every case of failure, the Official Assignees shall publicly fix the prices current in the Market immediately before the declaration, at which prices all Members having accounts open with the Defaulter shall close their transactions by buying of or selling to him such Securities as he may have contracted to take or deliver, the differences arising from the Defaulter's transactions being paid to, or claimed from the Official Assignees. Fixing prices on default.

(3) Unexpired options shall be similarly closed at a Market valuation. Valuation of Options.

(4) In the event of a dispute as to the prices or valuations they shall be fixed by Two Members of the Committee. Any objection must be lodged with the Official Assignees in writing within Two business days of the time when the list was posted in The Stock Exchange. Objections.

177. The Scale of Charges to be paid to the Official Assignees' Department shall be as follows— Charges.

From £1 to £5,000 collected 5 per cent.

From £5,000 collected 1½ per cent.

Sums received from the Estate of another Defaulter upon the same Settlement and redistribution, shall be charged with half the above percentage.

178. The Official Assignees shall collect and pay the assets into such Bank and in such names as the Committee may from time to time direct. The net proceeds of the collections after payment thereof of all legal and other expenses (including in respect of the office and administrative expenses of the Official Assignees a poundage or percentage on collections at a rate to be approved from time to time by the Committee) and any allowances or payments to the defaulter or his clerical staff which may be authorized by the Creditors in General Meeting or by any Committee of Creditors appointed by a General Meeting, shall be distributed as soon as possible amongst the Creditors in accordance with these Rules up to 20s. in the £ on the admitted claims but without interest. Any surplus which may remain after such payment has been made, should there be any, shall be at the disposal of and shall be returned to the defaulter. Collection and Distribution of Assets. Legal and other Expenses.

179. Creditors for differences shall have a prior claim on all differences received by, or due to a Defaulter's estate. Surplus. Difference creditors.

180. A creditor receiving, under any circumstances, a larger proportion of differences on a Defaulter's estate than that to which each of the creditors is entitled, shall refund such portion as shall reduce his dividend to an equality with the others. A Member completing a bargain with the principal of a Defaulter shall immediately notify the fact to the Official Assignees. Equality between Difference creditors.

181. A Member who shall have received a difference on an account, prior to the regular day for settling the same, or who shall have received a consideration for any prospective advantage, whether by a direct payment of money, or by the purchase or sale of Securities at a price either above or below the market price at the time the bargain was contracted, or by any other means, prior to the day for settling the transaction for which the consideration was received, shall, in case of the failure of the Member from whom he received such difference or consideration, refund the same for the general benefit of the creditors; and any When payments by Defaulters to be refunded.



Member who shall have, under the circumstances above stated, paid or given such difference or consideration, shall again pay the same to the creditors; so that, in each case, all persons may stand in the same situation with respect to the creditors, as if no such prior settlement or other arrangement had taken place.

Claims not on  
Stock  
Exchange  
transactions.  
Claims not  
admitted.

182. A claim which does not arise from a Stock Exchange transaction cannot be proved against a Defaulter's estate.

183. (1) The following claims will not be allowed to rank against a Defaulter's estate until all other claims have been paid in full, but assets arising from such transactions shall be collected and distributed among the creditors—

- (i.) Claims arising from Bargains or Options for a period beyond the Third ensuing Account-day.
- (ii.) Claims arising from differences which have been allowed to remain unpaid for more than Two business days beyond the day on which they became due.

Overdue  
differences.

(2) Differences overdue and paid previous to the day of default are not to be refunded.

Claims for  
Securities  
delivered  
and not  
paid for.

184. Members not receiving due payment for Securities delivered on the day of default, are entitled, so far as regards the value thereof, at the average price on the day of delivery, to be paid *pro rata*, and preferentially, out of assets resulting in any manner from such Securities, or derived from the Defaulter's own resources; and, should these prove insufficient, they shall, as to the balance of such claims, participate with other creditors in any surety-money of the Defaulter.

Loan on  
Security.

185. In the case of a loan of money made upon Securities, the lender shall realize his Securities within Three clear days, unless the creditors consent to a longer delay, or he shall take them at a price to be fixed by the Official Assignees, with appeal to any Two Members of the Committee. Should the Security be insufficient, the difference may be proved against the Defaulter's estate.

Loan without  
Security.

186. A loan without Security shall not be admitted as a claim on the differences of a Defaulter's estate; nor shall any such loan, when of longer duration than Two business days, be admitted as a claim on any other of his assets; and should any unsecured creditor receive payment of his loan from a Member on the day of his default, such payment being made out of assets not belonging to the Defaulter previously to that day, he shall refund the amount so received for the benefit of the Defaulter's estate.

Claims of  
Non-Members.

187. A Non-Member shall be allowed to participate in a Defaulter's estate, provided his claim be admitted by the creditors, or, in case of dispute, by the Committee; and a person whose claim is so admitted, may be represented at the meeting of creditors by any Member whom he may appoint.

Assignment  
of claims.

188. A Member, being a creditor upon a Defaulter's estate, shall not sell, assign or pledge his claim on such estate to a Non-Member without the concurrence of the Committee; and such assignment shall be immediately communicated to the Official Assignees.

Legal  
proceedings  
against a  
Defaulter.

189. A Member shall not attempt to enforce by law a claim arising out of a Stock Exchange transaction against a Defaulter, or the Principal of a Defaulter, without the consent of the creditors of the Defaulter or of the Committee.

190. (1) A Member may, with the consent of the Creditors and the sanction of the Committee, and not otherwise, carry on business for the benefit of a Defaulter in accordance with the Regulations contained in Appendix 38. Business :  
for a  
Defaulter.

(2) A Member shall not deal with a Defaulter on his own account before his re-admission to The Stock Exchange. With a  
Defaulter  
prohibited.

(3) A Member may with the sanction of the Committee, and not otherwise, carry on business for or with a person who has ceased to be a Member under Rules 42, 45, or 173, or who after ceasing to be a Member from any cause becomes a bankrupt. For or with  
insolvent,  
Etc.

(4) A Member shall not carry on business for or with a person who has been expelled from The Stock Exchange. For person  
expelled.

191. (1) Once in every month, the Official Assignees shall lay before the Committee an account of the balances in their hands belonging to Defaulters' estates, and the Committee shall order such balances as they think fit to be paid over to the account of the Trustees of The Stock Exchange Benevolent Fund, subject to recall by the Committee for distribution amongst creditors, or for payments by or to the Official Assignees which have been authorized by the Committee. Defaulters'  
balances.  
  
Monthly  
Statement.

(2) A statement of all sums so paid over, and of the amount remaining in the hands of the Trustees of The Stock Exchange Benevolent Fund on the 31st of December in every year, shall be furnished by the Official Assignees and deposited in the Committee Room, for the inspection of the Members of The Stock Exchange. Yearly  
Statement.

(3) On the first of February in each year the Official Assignees shall lay before the Committee the names of the Defaulters who have been re-admitted as Members or Clerks but have not paid 20s. in the £, with particulars as to the date of re-admission, the original liabilities, the dividends paid and the date and amount of the last payment. Return of  
Defaulters.

(4) On the first of March in each year, the Official Assignees shall lay before the Committee a statement of all dividends paid during the last year on each Defaulter's estate. Return of  
Dividends.

## COMMISSIONS

192. The Minimum Scale of Commission, except as provided in Rule 203, is laid down in Appendix 39, but is not compulsory in the case of Underwriting or the placing of New Issues. Nor shall it apply to Continuations provided that a Broker shall charge or allow in respect of Continuation business a rate not more favourable to his Principal than that actually paid or received by him in the market, or if the Continuation is effected wholly or partially by the employment of his own resources a rate which shall be fair and reasonable having regard to the market conditions of the day. Minimum  
Scale of  
Commission.

193. (1) A Broker shall render to a Non-Member a contract note in respect of every bargain done for such Non-Member's Account, stating the price at which the bargain has been done. Subject to the provisions of Rules 88 and 90 such contract note shall contain a charge for Commission at a rate not less than the Scale as laid down in Appendix 39, or as modified by the provisions of Rules 192, 195, 196 (1), 197 or 203. Contracts to  
be rendered  
and to set  
out price and  
Commission.



Dealings  
between  
Members.

(2) Subject to Rules 194, 203 (3) and 204 the Rules under the heading of "Commissions" do not lay down any restrictions as to dealings between Members.

Net  
Contracts.

(3) Except for business done under Rule 199 a Broker may render a net contract note provided Commission in accordance with Clause (1) of this Rule is charged and provided such contract note states that the Commission is allowed for in the price.

Commission  
Rules not to  
be evaded.

194. A Broker may not act as a Principal for the purpose of evading these Rules, or adopt any other procedure for a like purpose, nor may he commute his Commission for a fixed payment or salary unless in each year he be specially authorized so to do by the Committee, nor may he divide profits or Commission with a Non-Member except as authorized by Rules 199, 200 and 201.

Closing  
Transactions.

195. (1) A Broker may at his discretion charge only one Commission for buying and selling the same security for the same Principal for the same Account, or for the Account immediately following or for cash during the same account or during the account immediately following.

(2) The reduced commission allowed by Rule 197 may not be applied to bargains done under this Rule.

Change  
Investments.

196. (1) On a change of investments for the same Principal during the same Account or the Account immediately following, a Broker may at his discretion if the Securities have not been continued, charge Commission at a rate not less than the scale as laid down in Appendix 39 on one transaction and a reduced commission of not less than half that rate on the other. The full rate must be charged on the side which yields the larger amount.

(2) The provisions of Rule 197 may not be applied when Clause 1 of this Rule is used.

Transaction  
up to £2,500.

197. (1) On any transaction in which the consideration money is £2,500 or under, the full Commission laid down under Appendix 39 must be charged. In the case of a transaction in which the consideration money exceeds £2,500 full Commission must be charged up to that amount, but a Broker may, at his discretion (when in his opinion the volume of his Principal's business justifies it), charge a reduced Commission on the balance of the transaction, provided that in no case shall such reduced Commission be less than one-half of the Minimum Scale laid down in Appendix 39. The provisions of Rule 196 (1) may not be applied to this Rule.

Transaction  
over £2,500.

Commission  
may be  
reduced in  
certain  
cases.

(2) In the case of a transaction in not less than £20,000 Stock of a Security of or Guaranteed by the British or Indian Government having a currency of not more than 12 years, a Broker may at his discretion charge a reduced Commission on the entire amount provided that in no case shall such reduced Commission be less than one-half of the Minimum Scale laid down in Appendix 39. The provisions of Rule 196 (1) may not be applied to this Rule.

When  
inapplicable.

(3) The reduced scales allowed by this Rule are not applicable when a Broker charges Commission under Rules 195, 196 (1) or Clauses (1), (2) and (4) of Rule 203, or when Commission is shared with an agent under Rule 199.

Adjustment  
of  
Commission.

(4) In the case of an order to invest or realize an amount of money in or from several Securities, each bargain, the consideration for which does not exceed £2,500, must bear the full Commission, but should an order in one Stock, if above £2,500 consideration, be only partially executed, the Commission may be adjusted on completion of the order.

198. A Broker shall, subject to the provisions of Rules 88, 90 and 204 (4), charge Commission at not less than the Minimum Scale as laid down in Appendix 39 without modification to any Stock and Share Broker or Dealer in Great Britain and Northern Ireland and the Irish Free State, whether carrying on business in the form of a limited Company or otherwise, who advertises in the public Press for Stock Exchange business or issues Circulars respecting such business to other than his own Principals, or who is a Member of any other institution within the London Postal Area, where dealings in Stocks or Shares are carried on, and no allowance or rebate in respect of such Commission shall be made to such Broker or Dealer or any other person, but such restriction shall not apply to a Broker who remunerates a clerk in his own exclusive employment with a share of the Commission charged to such outside Broker or Dealer.

Sharing  
Commission  
or giving  
rebates to  
outside  
Brokers  
forbidden.

199. (1) A Broker may share his Commission with an Agent provided that (except in the case where such Agent is his Remisier or a Clerk in his own employment) the share of the Commission actually retained by him is not less than one-half of the Minimum Scale as laid down in Appendix 39, except as provided in Clause (5) of this Rule, and in Rule 195.

Commission  
may be  
shared with  
an agent on  
certain  
Conditions.

(2) A Broker may not share his Commission with an Agent if the Agent's share is divided with or allowed to his Principal.

(3) A Broker may not share with an Agent the Commission charged on the Agent's personal business. A Broker may not share with an Agent any of the Commission under this Rule on business done for a Principal for whom he deals under the provisions of Rule 197.

When  
inapplicable.

(4) A Broker who shares Commission with an Agent shall render a Contract Note naming the Agent and stating that the Commission charged is shared with such Agent under the provision of this Rule. Such Contract Note must not be rendered "net," and must show Commission at not less than the scale laid down in Appendix 39.

Contract  
Notes  
rendered  
to Agents.

(5) In the case of a change of investments made under the conditions of Clause (1) of Rule 196 a Broker may share Commission with an Agent on both sale and purchase, provided that (except where such Agent is the Broker's Remisier or a Clerk in his own employment) the share of Commission actually retained by the Broker is not less than one-half of the Minimum Scale laid down in Appendix 39 on the side yielding the larger amount, and on the other side not less than one-half of the reduced Commission allowed by Rule 196, Clause (1).

Change of  
Investments.

200. A Broker shall be entitled to employ for the purpose of his business a Remisier resident outside Great Britain and Northern Ireland and the Irish Free State whose name is registered with the Committee in accordance with Appendix 40, and to remunerate such Remisier with a share not exceeding one-half of the Commission charged to the Principal he introduces whether such Commission be at the Minimum Scale as laid down in Appendix 39 or as modified by the provisions of Rules 195, 196 (1) and 197.

Commission  
may be  
shared with  
a Remisier.

201. A Broker may remunerate a Clerk in his own exclusive employment with a share not exceeding one-half of the Commission charged to the Principal he introduces whether such Commission be at the Minimum Scale as laid down in Appendix 39 or as modified by the provisions of Rules 195, 196 (1) and 197,

Commission  
may be  
shared with  
a Clerk.



provided that such remuneration is not shared by the Clerk with or allowed to his Principal.

202. A Broker shall not share Commission with a Dealer or a Clerk to a Dealer.

Special  
Commission  
for country  
Brokers.

203. (1) On any transaction for a Member of any Associated Stock Exchange in Great Britain and Northern Ireland and the Irish Free State, or a Stock Broker whose name is included in the "List of Stock Brokers in Great Britain and Northern Ireland kept by the Commissioners of Inland Revenue in pursuance of Section 77 (3) of the Finance (1909-10) Act, 1910," and who does not carry on business within the London Postal Area, such Broker not being excluded by the provisions of Rule 198, a Broker may at his discretion charge Commission at a rate not less than the scale laid down in Clause (4) of this Rule, and when orders for the same Principal for sale and re-investment for the same Account are given simultaneously, Commission at a rate not less than the Scale laid down in Clause (4) of this Rule on both sale and purchase, or at a rate not less than one-half of the Scale laid down in Appendix 39 on one transaction and reduced Commission of not less than one-quarter of that rate on the other. The higher rate must be charged on the side which yields the larger amount.

Change of  
Investments.

Minimum  
Commission.

(2) The Commission laid down by this Rule shall be the minimum Commission to be charged on all business coming to The Stock Exchange from a Member of any Associated Stock Exchange or country Broker, as defined in Clause (1) of this Rule, except that a Broker may apply to such business the provisions of Rule 195. Such Commission shall not be shared with any one except a Clerk in the Broker's own exclusive employment. Such Clerk shall not under any circumstances either directly or indirectly divide or share his proportion of such Commission with or allow the same to such country Broker.

Closing  
Transactions.

Evasions.

(3) A Broker shall not act as a Principal or send an order to a Member of an Associated Stock Exchange or country Broker for the purpose of evading the minimum Commission on such business, nor shall he adopt any other procedure for a like purpose. Any evasion will be treated as a breach not only of this Rule but also of Rule 87 which prohibits shunting.

(4) On transactions for Brokers as defined in Clause (1) of this Rule a Broker may at his discretion charge a reduced Commission at the rate of not less than one-half of the rates laid down in Appendix 39, and further he may charge the following exceptional reduced rates, viz.—

(a) Registered Stocks.

Price £ 50 or under	..	$\frac{1}{16}\%$	on Stock.
Over £ 50 to £100	..	$\frac{1}{8}\%$	" "
" £100 to £150	..	$\frac{3}{16}\%$	" "
" £150 to £200	..	$\frac{1}{4}\%$	" "
With $\frac{1}{16}$ rise for every £50 in price.			

(b) Shares of \$50 or \$100 Denomination dealt in in the American Market.

Price \$ 50 or under	..	3d.	per Share.
Over \$ 50 to \$100	..	4½d.	" "
" \$100 to \$150	..	6d.	" "
" \$150 to \$200	..	9d.	" "
" \$200	..	1s. 0d.	" "

The provision of Rule 196 (1) may not be applied when the exceptional reduced rates allowed by this Rule are charged.

204. For the purposes of administering the Commission Rules :

- |   |   |
|---|---|
| (1) A Broker, when transacting business between a Dealer and a Member of the Public, shall be considered as acting as the Agent of the Non-Member.  | Business between Dealer and Public.                     |
| (2) The remuneration of a Broker when transacting business between a Dealer and a Country Broker who is entitled to the privileges of Rule 203, must in no case be less than the minimum rate laid down in Rule 203.  | Between Dealer and Country Broker.                      |
| (3) A Broker, when transacting business between a Dealer and an outside Broker or Dealer who is excluded by the provisions of Rule 198, must always charge the latter with full Commission as laid down in Appendix 39.   | Between Dealer and person excluded by Rule 198.         |
| (4) Subject to the provisions of Rule 90, a Broker, when transacting business between a Country Broker who is entitled to the privileges of Rule 203 and an outside Broker or Dealer who is excluded by the provisions of Rule 198, must charge the full Commission as laid down in Appendix 39 to the latter and none to the former. | Between Country Broker and person excluded by Rule 198. |





# APPENDIX

## RE-ELECTIONS, ADMISSIONS, AND RE-ADMISSIONS

### 1. Form of Application for Re-election—

(Rule 23.)

*To the Secretary to the Committee for General Purposes.*

SIR,

Please acquaint the Committee for General Purposes, that I am desirous of being re-elected a Member of The Stock Exchange, for the year commencing on the 25th of March, 19 , upon the terms of, and under and subject in all respects to the Rules and Regulations of The Stock Exchange, which now are, or hereafter may be for the time being in force.

My Residence is

My Office Address is

My Bankers are

My Telephone Number is

\*My Stand Number is

I am engaged in Partnership with

¶ Trading as

† I propose to act as a Broker

I propose to act as a Broker's Clerk

I propose to act as a Dealer

I propose to act as a Dealer's Clerk

I am not engaged in active Business

Strike out  
the lines  
which do not  
apply.

I am not engaged as Principal or Clerk in any business other than that of The Stock Exchange, nor is my wife engaged in business, nor am I a Member of, or Subscriber to, any other Institution in which dealings in Stocks or Shares are carried on.

‡ The under-named will continue to act as Clerk .

Name of the Clerk. §	Here state whether the Clerk is authorized or not to transact business or admitted to the Settling Room only, and if he is a Member, it is to be so stated.

I am, Sir, yours faithfully,  
(Signature in full.)

The Subscription is to be paid to the credit of the Managers, within Twenty-one days from the 25th of March.

§ Rule 58. (1) A Member desirous of obtaining the admission of an Authorized, Unauthorized or Settling Room Clerk shall apply for the permission of the Committee on one of the Forms 18, 19, or 20 in the Appendix.

(2) A Member who has any arrangement for the sharing of Commission with another Member shall apply for his admission as a Clerk on Form 18 or 19 in the Appendix.

(3) A Member who employs another Member as his Office Clerk shall apply for his admission as a Clerk on Form 19 in the Appendix.

Rule 70. A Member parting with a Clerk or withdrawing his authorization, shall give notice in writing to the Secretary, who shall forthwith communicate the same to The Stock Exchange in the usual manner.

\* Please state here at which Stand you wish to be called and have your letters and telegrams delivered.

† The names of all Members who return themselves as Brokers will be inserted in the published "Lists of Brokers who are Members of the Stock Exchange."

¶ All Members of a firm should send in their forms together if possible.

‡ In the case of a Partnership only one member of the firm need make the return as to Clerks.



## 2. Re-election under Rule 24 (2) or 25 (3)

*To the Secretary to the Committee for General Purposes.*

SIR,

Please acquaint the Committee for General Purposes that I am desirous of being re-elected a Member of The Stock Exchange, for the year commencing on the 25th of March, 19 , upon the terms of, and under and subject in all respects to the Rules and Regulations of The Stock Exchange, which now are, or hereafter may be for the time being in force \* I am aware that I must acquire Stock Exchange Share before exercising any of the privileges of Membership.

My Residence is

My Office is

My Bankers are

† I propose to act as a Broker	} Strike out the lines which do not apply.
I propose to act as a Broker's Clerk	
I propose to act as a Dealer	
I propose to act as a Dealer's Clerk	
I do not propose to engage in active Business	

I am not engaged as Principal or Clerk in any business other than that of The Stock Exchange, nor is my wife engaged in business, nor am I a Member of, or Subscriber to, any other Institution in which dealings in Stocks or Shares are carried on.

I am, Sir, yours faithfully,

*(Signature in full.)*

We recommend Mr. , who has not exercised his right of nomination or become ineligible under Rule 26, as a fit Person to be re-elected a Member of The Stock Exchange ; and in case he shall be publicly declared a Defaulter by , we each of us hereby engage to pay to his creditors, upon application, the sum of Hundred Pounds to be applied in discharge of his Debts in The Stock Exchange.

\*\* *(Signatures in full.)* {

---

\*. \* The Recommenders must attend, together with the person recommended, at such time as the Committee may require.

The Recommenders are required to have such personal knowledge of the applicant and of his past and present circumstances, as shall satisfy the Committee as to his eligibility.

The Subscription is to be paid to the credit of the Managers.

\* To be struck out by applicants who from the date of their admission do not require a Share Qualification or those who may not have parted with their Qualification Share or Shares.

† The names of all Members who return themselves as Brokers, or Clerks to Brokers, will be inserted in the published " Lists of Brokers who are Members of The Stock Exchange "

## 3. Re-election under Rule 25 (1)—

*To the Secretary to the Committee for General Purposes.*

SIR,

Please acquaint the Committee for General Purposes that I am desirous of being re-elected a Member of The Stock Exchange, for the year commencing on the 25th of March, 19 , upon the terms of, and under and subject in all respects to the Rules and Regulations of The Stock Exchange, which now are, or hereafter may be for the time being in force.

\*I am aware that I must acquire Stock Exchange Share before exercising any of the privileges of Membership.

My Residence is

My Office is

My Bankers are

†I propose to act as a Broker	} Strike out the lines which do not apply.
I propose to act as a Broker's Clerk	
I propose to act as a Dealer	
I propose to act as a Dealer's Clerk	
I do not propose to engage in active Business	

I am not engaged as Principal or Clerk in any business other than that of The Stock Exchange, nor is my wife engaged in business, nor am I a Member of, or Subscriber to, any other Institution in which dealings in Stocks or Shares are carried on.

I am, Sir, yours faithfully,

*(Signature in full.)*

We recommend Mr. , who has not exercised his right of nomination or become ineligible under Rule 26, as a fit Person to be re-elected a Member of The Stock Exchange.

*(Signatures in full.)* }

---

\*.\* The Recommenders must attend, together with the person recommended, at such time as the Committee may require.

The Recommenders are required to have such personal knowledge of the applicant and of his past and present circumstances as shall satisfy the Committee as to his eligibility.

The Subscription is to be paid to the credit of the Managers.

\* To be struck out by applicants who from the date of their admission do not require a Share Qualification, or who may not have parted with their Qualification Share or Shares.

† The names of all Members who return themselves as Brokers, or Clerks to Brokers, will be inserted in the published " Lists of Brokers who are Members of The Stock Exchange "





(Rule 33 [2].)

SIR,

I am a British subject, and                      years of age.

I append Nomination Form No.

My Residence is

My Office is

## My Bankers are

† I propose to act as a Broker	} Strike out the lines which do not apply.
I propose to act as a Broker's Clerk	
I propose to act as a Dealer	
I propose to act as a Dealer's Clerk	
I do not propose to engage in active Business	

I am not engaged as Principal or Clerk in any business other than that of The Stock Exchange, nor is my wife engaged in business, nor am I a Member of, or Subscriber to, any other Institution in which dealings in Stocks or Shares are carried on.

I am, Sir, yours faithfully,

(Signature in full.)

We recommend Mr. \_\_\_\_\_ who has never been engaged as a Principal in any business, as a fit Person to be admitted a Member of The Stock Exchange ; and in case he shall be publicly declared a Defaulter within Four years from the date of his admission, we each of us hereby engage to pay to his creditors upon application, the sum of Three Hundred Pounds to be applied in discharge of his Debts in The Stock Exchange.

\* \* \* (Signatures in full)

\* \* The Recommenders must attend, together with the person recommended, at such time as the Committee may require.

Recommendations are required to have such personal knowledge of Candidates, and of their past and present circumstances as shall satisfy the Committee as to their eligibility.

† The names of all Members who return themselves as Brokers, or Clerks to Brokers, will be inserted in the published "Lists of Brokers who are Members of The Stock Exchange."

Rule 38 to be printed on back of Form followed by:—

Statement by Applicant.

Date.

Signature.



## 6. Form of Application for Admission with Two Sureties without nomination—

(Rules 29 and 33[2].)

*To the Secretary to the Committee for General Purposes.*

SIR,

Please acquaint the Committee for General Purposes that I am desirous of being admitted a Member of The Stock Exchange, for the year commencing on the 25th of March, 19 , upon the terms of, and under and subject in all respects to the Rules and Regulations of The Stock Exchange which now are, or hereafter may be for the time being in force.

I have read the Rules and Regulations of The Stock Exchange.

I am a British subject, and                      years of age.

I am aware that I must acquire One Stock Exchange Share before exercising any of the privileges of Membership.

I enclose Statement by my Recommenders as laid down in Rule 35.  
Overleaf is Statement by myself in accordance with Rule 38.

My Residence is

My Office is

My Bankers are

†I propose to act as a Broker	} Strike out the lines which do not apply.
I propose to act as a Broker's Clerk	
I propose to act as a Dealer	
I propose to act as a Dealer's Clerk	
I do not propose to engage in active Business	

I am not engaged as Principal or Clerk in any business other than that of The Stock Exchange, nor is my wife engaged in business, nor am I a Member of, or Subscriber to, any other Institution in which dealings in Stocks or Shares are carried on.

I am, Sir, yours faithfully,

*(Signature in full.)*

We recommend Mr. , who has never been engaged as a Principal in any business, as a fit Person to be admitted a Member of The Stock Exchange; and in case he shall be publicly declared a Defaulter within Four years from the date of his admission, we each of us hereby engage to pay to his creditors, upon application, the sum of Three Hundred Pounds to be applied in discharge of his debts in The Stock Exchange.

\* \* \* *(Signatures in full.)*

\* \* \* The Recommenders must attend, together with the person recommended, at such time as the Committee may require.

Recommenders are required to have such personal knowledge of Candidates and of their past and present circumstances as shall satisfy the Committee as to their eligibility.

† The names of all Members who return themselves as Brokers, or Clerks to Brokers, will be inserted in the published "Lists of Brokers who are Members of The Stock Exchange."

Rule 38 to be printed on back of Forms followed by—

Statement by Applicant.

*Date.*

*Signature.*

# 7. Form of Application for Re-admission without Share Qualification—

(Rule 43 [1].)

(ADMITTED )

*To the Secretary to the Committee for General Purposes.*

SIR,

Please acquaint the Committee for General Purposes that I am desirous of being re-admitted a Member of The Stock Exchange, for the year commencing on the 25th of March, 19 , upon the terms of, and under and subject in all respects to the Rules and Regulations of The Stock Exchange, which now are, or hereafter may be for the time being in force.

My Residence is

My Bankers are

†I propose to act as a Broker	} Strike out the lines which do not apply.
I propose to act as a Broker's Clerk	
I propose to act as a Dealer	
I propose to act as a Dealer's Clerk	
I do not propose to engage in active Business	

I am not engaged as Principal or Clerk in any business other than that of The Stock Exchange, nor is my wife engaged in business, nor am I a Member of, or Subscriber to, any other Institution in which dealings in Stocks or Shares are carried on.

I am, Sir, yours faithfully,

*(Signature in full.)*

---

† The names of all Members who return themselves as Brokers, or Clerks to Brokers, will be inserted in the published "Lists of Brokers who are Members of The Stock Exchange."



## 8. Form of Application for Re-admission with Share Qualification—

(Rule 45 [1].)

ADMISSION AFTER 23RD NOVEMBER, 1904.

*To the Secretary to the Committee for General Purposes.*

SIR,

Please acquaint the Committee for General Purposes that I am desirous of being re-admitted a Member of The Stock Exchange, for the year commencing on the 25th of March, 19 , upon the terms of, and under and subject in all respects to the Rules and Regulations of The Stock Exchange, which now are, or hereafter may be for the time being in force.

My Residence is

My Bankers are

† I propose to act as a Broker	} Strike out the lines which do not apply.
I propose to act as a Broker's Clerk	
I propose to act as a Dealer	
I propose to act as a Dealer's Clerk	
I do not propose to engage in active Business	

I am aware that I must acquire One Stock Exchange Share before exercising any of the privileges of Membership.

I am not engaged as Principal or Clerk in any business other than that of The Stock Exchange, nor is my wife engaged in business, nor am I a Member of, or Subscriber to, any other Institution in which dealings in Stocks or Shares are carried on.

I am, Sir, yours faithfully,

*(Signature in full.)*

---

† The names of all Members who return themselves as Brokers, or Clerks to Brokers, will be inserted in the published "Lists of Brokers who are Members of The Stock Exchange."

## 9. Form of Letter to be sent to Members on Re-election—

(Rule 21.)

SIR,

I am directed to inform you, that you are re-elected a Member of The Stock Exchange for the year commencing on the 25th of March, 19 , upon the terms of and under and subject in all respects to the Rules and Regulations of The Stock Exchange, which now are, or hereafter may be for the time being in force.

I am, Sir,

Yours faithfully,

EDWARD SATTERTHWAITE,

Secretary to the Committee for General Purposes.

## 10. Form of First Letter, to be sent to New Members on Election—

(Rule 42.)

COMMITTEE ROOM,

THE STOCK EXCHANGE,

LONDON, E.C.2 ..... 19

SIR,

I am directed to inform you that you are elected a Member of The Stock Exchange for the year commencing on the 25th March, 19 , upon the terms of, and under and subject in all respects to the Rules and Regulations of The Stock Exchange, which now are, or hereafter may be for the time being in force.

Upon registration into your name of your Qualification Share or Shares, a further Notice will be sent to you giving you the date upon which you can exercise the privileges of Membership.

I am, Sir,

Yours faithfully,

EDWARD SATTERTHWAITE,

Secretary to the Committee for General Purposes.



# 11. Form of Second Letter, to be sent to New Members on Admission—

(Rule 42 [2].)

Resignation of Nominating Member accepted under Rule 27 (2).

Resignation, &c., under Rule 27 (3).

Probate of Death Registered under Rule 27 (6).

Stock Exchange Shares Registered under Rule 42.

COMMITTEE ROOM,  
THE STOCK EXCHANGE,  
LONDON, E.C.2 ..... 19

SIR,

Referring to my previous notice of the \_\_\_\_\_, I am directed to inform you that, the provisions of the Rules relating to the Admission of Members having been complied with, you are now entitled to exercise the privileges of Membership of The Stock Exchange.

I am, Sir,

Yours faithfully,

EDWARD SATTERTHWAITE,  
Secretary to the Committee for General Purposes.

# 12. Form of Letter on Re-admission without Share Qualification—

(Rule 43.)

COMMITTEE ROOM,  
THE STOCK EXCHANGE,  
LONDON, E.C.2 .....19

SIR,

I am directed to inform you that you are Re-admitted a Member of The Stock Exchange for the year commencing on the 25th of March, 19\_\_\_\_, upon the terms of and under and subject in all respects to the Rules and Regulations of The Stock Exchange, which now are, or hereafter may be for the time being in force.

I am, Sir,

Yours faithfully,

EDWARD SATTERTHWAITE,  
Secretary to the Committee for General Purposes.

### 13. Form of First Letter on Re-admission with Share Qualification—

(Rule 45.)

ADMISSION AFTER 23RD NOVEMBER, 1904.

COMMITTEE ROOM,  
THE STOCK EXCHANGE,  
LONDON, E.C.2 ..... 19

SIR,

I am directed to inform you that you are Re-admitted a Member of The Stock Exchange for the year commencing on the 25th of March, 19 , upon the terms of and under and subject in all respects to the Rules and Regulations of The Stock Exchange, which now are, or hereafter may be for the time being in force.

Upon registration into your name of your Qualification Share a further Notice will be sent to you giving you the date upon which you can exercise the privileges of Membership.

I am, Sir,

Yours faithfully,

EDWARD SATTERTHWAITE,  
Secretary to the Committee for General Purposes.

### 14. Form of Second Letter on Re-admission with Share Qualification—

(Rule 45 [2].)

RE-ADMISSION OF MEMBER.

ADMITTED AFTER 23RD NOVEMBER, 1904.

STOCK EXCHANGE SHARE REGISTERED.

COMMITTEE ROOM,  
THE STOCK EXCHANGE,  
LONDON, E.C.2 ..... 19

SIR,

Referring to my previous notice of , I am directed to inform you, that the provisions of Rule 45 having been complied with, you are now entitled to exercise the privileges of Membership of The Stock Exchange.

I am, Sir,

Yours faithfully,

EDWARD SATTERTHWAITE,  
Secretary to the Committee for General Purposes.



## NOMINATIONS

## 15. Forms of Nomination—

(Rule 27 [1].)

No. 1.

*To the Committee for General Purposes  
of The Stock Exchange.*

GENTLEMEN,

I

a Member of The Stock Exchange, hereby nominate Mr.  
as my successor and I hereby tender the resignation of my membership in his  
favour.

I am, Gentlemen,

Yours faithfully,

..... of ..... 19

No. 2.

*To the Committee for General Purposes  
of The Stock Exchange.*

GENTLEMEN,

I

having resigned my Membership of The Stock Exchange, and such resignation  
having been duly accepted by the Committee, hereby nominate Mr.  
as my successor.

I am, Gentlemen,

Yours faithfully,

..... of ..... 19

No. 3.

*To the Committee for General Purposes  
of The Stock Exchange.*

GENTLEMEN,

I

having discontinued  
my subscription for the year commencing 25th March, 19 , hereby nominate  
Mr. as my successor.

I am, Gentlemen,

Yours faithfully,

..... of ..... 19

No. 4.

*To the Committee for General Purposes  
of The Stock Exchange.*

GENTLEMEN,

We, the undersigned legal personal representatives of Mr.  
deceased, until a Member of  
The Stock Exchange, hereby nominate Mr.  
as his successor.

We are, Gentlemen,

Yours faithfully,

Witness

..... of ..... 19

## WAITING LIST

## 16. Form of Application to be placed upon the Waiting List.

(Rule 29 [2].)

*To the Committee for General Purposes  
of The Stock Exchange.*

GENTLEMEN,

I having completed Four years' service as a Clerk in The Stock Exchange in accordance with Rule 29 (2), hereby apply to be placed upon the waiting list of applicants for election without nomination.

Name (in full)

Private Address

Employer

Date

I am, Gentlemen,

Yours faithfully,

(Signature.)

## MARKET PARTNERSHIP

(Rule 57.)

## 17. Form of Notice of Market Partnership—

*To the Secretary to the  
Committee for General Purposes.*

SIR,

We, the undersigned, who each deal and settle our Bargains in our own name, beg to inform the Committee for General Purposes that, from this day until further notice, we hold ourselves jointly responsible to The Stock Exchange for all transactions entered into by either of us in

{ .....  
 { .....  
 { .....

We are, Sir, &amp;c.





## 20. Form of Application for a Settling Room Clerk—

(Rule 58.)

☞ Observe the Notes at foot hereof.

*To the Committee for General Purposes  
of The Stock Exchange.*

GENTLEMEN,

request your permission to introduce  
(Aged )

as

Clerk, { FOR ADMISSION TO THE  
SETTLING ROOM,

for the year commencing 25th March, 19 , assuring you that he is in every respect eligible in strict conformity with Rules Nos. 64, 65 and 66.

Yours faithfully,

THE STOCK EXCHANGE, LONDON.  
of 19

Rule 64.—A Member applying for the admission of a Clerk must satisfy the Committee—

1. That the Clerk is of the requisite age, i.e. for an Authorized Clerk, 21, for an Unauthorized or Settling Room Clerk, 17.
  2. That the Clerk would be in all other respects eligible for admission as a Member.
  3. That he has obtained a satisfactory Reference from the Clerk's last employer.
  4. That he has a sufficient knowledge of the Clerk's previous career.
- If the Clerk has been in Partnership out of The Stock Exchange he must submit to the Committee a copy of the *London Gazette* in which the dissolution of his Partnership is notified.

## 21. Form of Application for a Temporary Unauthorized Clerk.

(Rule 60.)

*To the Committee for General Purposes  
of The Stock Exchange.*

GENTLEMEN,

request your permission to introduce from the  
to

as Clerk, UNAUTHORIZED, temporarily, in lieu of (Aged )  
who is serving with the at during  
that period.

Yours faithfully,

THE STOCK EXCHANGE, LONDON.  
of 19

---

With the concurrence of the Trustees and Managers, the Committee will be prepared to allow Settling Room Clerks to enter the House to take the place of Unauthorized Clerks who may be absent as Members of the Territorial Force for the period of their Annual Training in Camp.

They will also be prepared to admit temporary Unauthorized Clerks for a similar purpose.

The Trustees and Managers have consented to waive any entrance fee or subscription in respect of such temporary Clerks.



## 22. Form of Application for a Temporary Settling Room Clerk—

(Rule 60.)

*To the Committee for General Purposes  
of The Stock Exchange.*

GENTLEMEN,

request your permission to introduce from the  
to

as Clerk, FOR ADMISSION TO THE SETTling ROOMS temporarily, in lieu (Aged )  
of who is serving with the  
at during that period.

Yours faithfully,

THE STOCK EXCHANGE, LONDON.  
of 19

---

With the concurrence of the Trustees and Managers, the Committee will be prepared to allow Settling Room Clerks to enter the House to take the place of Unauthorized Clerks who may be absent as Members of the Territorial Force for the period of their Annual Training in Camp.

They will also be prepared to admit temporary Unauthorized Clerks for a similar purpose.

The Trustees and Managers have consented to waive any entrance fee or subscription in respect of such temporary Clerks.

## 23. Clerks registered for Admission to the Decoding Room.

(Rule 61.)

☞ Observe the Notes at foot hereof.

*To the Committee for General Purposes  
of The Stock Exchange.*

GENTLEMEN,

request your permission to register

as \*Clerk, FOR ADMISSION TO THE DECODING ROOMS, (Aged )  
for the year commencing 25th March, 19

Yours faithfully,

THE STOCK EXCHANGE, LONDON.  
of 19

- 
- \* If the Clerk is already an Unauthorized or Settling Room Clerk it must be so stated.

### REGULATIONS AS TO REGISTRATION OF DECODING ROOM CLERKS.

Members having seats in the Decoding Room shall be required to register the names of the Clerks they wish to employ in the room, and may so register *two* Clerks for *each* seat, but only one Clerk per seat may be employed in the room at any time.

Members applying to register Clerks must attend before the Clerks' Sub-Committee to receive permission, which the Committee may withdraw at any time. All Clerks admitted to the Decoding Room shall be *bona fide* Clerks of the Members who rent seats.

If Clerks so admitted have not the right also to enter The Stock Exchange or the Settling Rooms, service in the Decoding Room shall not reckon towards qualification for Membership or Authorization, but service in the Decoding Room shall not disqualify Clerks who also have admission to The Stock Exchange or the Settling Rooms.

In a case of emergency a Member may make written application for the temporary substitution of an unregistered Clerk for a registered Clerk which must be approved by the signature of either the Chairman or the Deputy-Chairman, but such permission shall only hold good until the next meeting of the Clerks' Sub-Committee.

24. Form of Letter to be sent to a Member on the Admission of an Authorized Clerk—

(Rule 69.)

COMMITTEE ROOM,  
THE STOCK EXCHANGE,  
LONDON, ....., 19

DEAR SIR ,

I am directed to acquaint you that the Committee have allowed your application for the introduction of Mr. as your Clerk

AUTHORIZED  
for the year commencing 25th March, 19

I am, Dear Sir ,

Yours faithfully,

EDWARD SATTERTHWAITE,  
Secretary to the Committee for General Purposes.

To

25. Form of Letter to be sent to a Member on the Admission of an Unauthorized Clerk—

(Rule 69.)

COMMITTEE ROOM,  
THE STOCK EXCHANGE,  
LONDON, ....., 19

DEAR SIR ,

I am directed to acquaint you that the Committee have allowed your application for the introduction of Mr. as your Clerk

UNAUTHORIZED  
for the year commencing 25th March, 19

I enclose Badge No. ....

I am, Dear Sir ,

Yours faithfully,

EDWARD SATTERTHWAITE,  
Secretary to the Committee for General Purposes.

To

---

Employers will be held responsible for the strict observance of the following Regulations—

- (1) Unauthorized Clerks are not allowed to transact business of any sort, whether in the nature of purchase, sale or contango, in The Stock Exchange or elsewhere.
- (2) Unauthorized Clerks are not allowed to loiter in The Stock Exchange.
- (3) Unauthorized Clerks are required to wear their Badges in accordance with the Regulations. i.e. in the lapels of their coats.



## 26. Form of Letter to be sent to a Member on the Admission of a Settling Room Clerk—

(Rule 69.)

COMMITTEE ROOM,  
THE STOCK EXCHANGE,  
LONDON, ..... 19

DEAR SIR ,

I am directed to acquaint you that the Committee have allowed your application for the introduction of Mr.  
as your Clerk

FOR ADMISSION TO THE SETTling ROOM  
for the year commencing 25th March, 19  
I enclose Badge No. ....

I am, Dear Sir ,

Yours faithfully,

EDWARD SATTERTHWAITE,  
Secretary to the Committee for General Purposes.

To

Employers will be held responsible for the strict observance of these Regulations—

- (1) Settling Room Clerks are only allowed to enter the Settling Room.
- (2) Settling Room Clerks are required to wear their Badges in accordance with the Regulations, i.e. in the lapels of their coats.

## 27. Form of Letter to be sent to a Member on the admission of a Temporary Unauthorized Clerk.

(Rule 69.)

COMMITTEE ROOM,  
THE STOCK EXCHANGE,  
LONDON, ..... 19  
TERRITORIAL TRAINING.

DEAR SIR ,

I am directed to acquaint you that the Committee have allowed your application for the introduction of Mr.  
as your Clerk

UNAUTHORIZED, temporarily,  
in lieu of

I enclose Badge No. .... which please return on

I am, Dear Sir,

Yours faithfully,

EDWARD SATTERTHWAITE,  
Secretary to the Committee for General Purposes.

To

Employers will be held responsible for the strict observance of the following Regulations—

- (1) Unauthorized Clerks are not allowed to transact business of any sort, whether in the nature of purchase, sale or contango, in The Stock Exchange or elsewhere.
- (2) Unauthorized Clerks are not allowed to loiter in The Stock Exchange.
- (3) Unauthorized Clerks are required to wear their Badges in accordance with the Regulations, i.e. in the lapels of their coats.

## 28. Form of Letter to be sent to a member on the admission of a Temporary Settling Room Clerk.

(Rule 69.)

COMMITTEE ROOM,

THE STOCK EXCHANGE,

LONDON,.....19

TERRITORIAL TRAINING.

DEAR SIR ,

I am directed to acquaint you that the Committee have allowed your application for the introduction of Mr.  
as your Clerk

FOR ADMISSION TO THE SETTTLING ROOM, temporarily, in lieu of

I enclose Badge No. .... which please return on

I am, Dear Sir,

Yours faithfully,

EDWARD SATTERTHWAITE,

Secretary to the Committee for General Purposes.

To

Employers will be held responsible for the strict observance of these Regulations :

(1) Settling Room Clerks are only allowed to enter the Settling Room.

(2) Settling Room Clerks are required to wear their Badges in accordance with the Regulations,  
i.e. in the lapels of their coats.

## 29. Form of Letter to be sent to a Member on the admission of a Decoding Room Clerk.

(Rule 61.)

COMMITTEE ROOM,

THE STOCK EXCHANGE,

LONDON,.....19

DEAR SIR ,

I am directed to acquaint you that the Committee have allowed your application for the registration of Mr.  
as your Clerk

FOR ADMISSION TO THE DECODING ROOMS

for the year commencing 25th March, 19

I am, Dear Sir,

Yours faithfully,

EDWARD SATTERTHWAITE,

Secretary to the Committee for General Purposes.

To

### REGULATIONS AS TO REGISTRATION OF DECODING ROOM CLERKS.

Members having seats in the Decoding Room shall be required to register the names of the Clerks they wish to employ in the room, and may so register *two* Clerks for *each* seat, but only one Clerk per seat may be employed in the room at any time.

Members applying to register Clerks must attend before the Clerks' Sub-Committee to receive permission, which the Committee may withdraw at any time. All Clerks admitted to the Decoding Room shall be *bona fide* Clerks of the Members who rent seats.

If Clerks so admitted have not the right also to enter The Stock Exchange or the Settling Rooms, service in the Decoding Room shall not reckon towards qualification for Membership or Authorization, but service in the Decoding Room shall not disqualify Clerks who also have admission to The Stock Exchange or the Settling Rooms.

In a case of emergency a Member may make written application for the temporary substitution of an unregistered Clerk for a registered Clerk which must be approved by the signature of either the Chairman or the Deputy-Chairman, but such permission shall only hold good until the next meeting of the Clerks' Sub-Committee.



## CLERKS' BADGES

(Rule 68.)

## 30. Regulations as to Clerks' Badges—

1. An Unauthorized Clerk will not be allowed to enter the House or the Settling or Checking Rooms without a Blue Badge worn in the lapel of the coat, and a Settling Room Clerk will not be allowed to enter the Settling Room without a Red Badge worn in the same manner.
2. The only Badges authorized are those issued from the Secretary's Office, and Members are required to notify their loss to the Secretary.
3. If a Badge be lost, a fine of 10s. is to be paid to the Trustees and Managers.
4. A Member withdrawing a Clerk is to return the Badge to the Secretary's Office at the date when the withdrawal takes effect.
5. A Member authorizing a Clerk or promoting a Settling Room Clerk to the House is to return the Clerk's Badge as soon as the change is passed by the Committee.

## REFERENCE BY NON-MEMBER

## 31. Form of Reference by Non-Member—

(Rule 77.)

*To the Committee for General Purposes of  
The Stock Exchange, London ;*

In the matter of a Complaint between \_\_\_\_\_ and \_\_\_\_\_

GENTLEMEN,

I do hereby consent to refer this matter to you, and I undertake to be bound by the said reference, and to abide by and forthwith to carry into effect your Award, Resolution or decision in this matter, in the same manner as if I were a Member of The Stock Exchange ; and I further undertake not to institute, prosecute, or cause, or procure to be instituted, or prosecuted, or take any part in proceedings, either civil or criminal, in respect of the case submitted. And I consent that the Committee may proceed in accordance with their ordinary rules of procedure, and I undertake to be bound by the same. Also that the Committee may proceed *ex parte* after notice, and that it shall be no objection that the Members of the Committee present vary during the inquiry, or that any of them may not have heard the whole of the evidence, and any Award or Resolution of the Committee, signed by the Chairman for the time being, shall be conclusive that the same was duly made or passed ; and that the reference was conducted in accordance with the practice of the Committee. And I hereby agree that this letter shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act, 1889.

  
 Agreement Stamp.

# 32. ARBITRAGE BUSINESS

(Rule 92.)

*To the Secretary to the  
Committee for General Purposes.*

....., 19

SIR,

I beg to apply under Rule 92 for authority to carry on Arbitrage Business  
We until the 25th March, 19 , with

.....  
.....of .....  
.....

in connection with my business as **BROKERS** ( One of these  
our **DEALERS** ( lines to be  
struck out.

I am,  
We are Sir,

Yours faithfully,

92. Subject to annual authorization by the Committee a Member, whether Broker or Dealer, may carry on Arbitrage business outside Great Britain, Northern Ireland, and the Irish Free State, with a Non-Member, but a Broker so authorized shall not make prices or otherwise carry on the business of a Dealer, and a Dealer so authorized shall not act as an Agent by executing orders for such Non-Member.

## REGULATIONS.

(1) Except under special circumstances permission will not be granted to any Member to carry on Arbitrage business with more than one correspondent in the same Town.

(2) The names of Members authorized to transact Arbitrage business will be placed on a list which will be open to the inspection of Members in the Secretary's Office, but the names and addresses of their correspondents will not be disclosed.



## 33. OFFICIAL LIST OF MAKING-UP PRICES

(Rule 109.)

Regulations as to the inclusion of Securities in The Stock Exchange Official List of Making-up Prices.

- (1) The List shall be subject to Revision at intervals of not more than three months.
- (2) Securities not undertaken by the Settlement Department shall only be included in the Official List of Making-up Prices for ordinary accounts subsequent to the First Settlement upon the signed requisition of Five Members or Firms, Two of whom at least shall be Brokers.
- (3) Securities undertaken by the Settlement Department shall be included in the Official List of Making-up Prices without requisition.

34. REGULATIONS FOR OBTAINING PERMISSION  
TO DEAL IN NEW ISSUES

(Rule 159.)

## A

The following documents and particulars should be sent to the Secretary of the Share and Loan Department, when application is made for permission to deal—

1. (a) Certificate of Incorporation (in the case of a Company registered abroad notarially certified copy or translation of Certificate of Incorporation and of By-Laws), (b) *the Certificate entitling the Company to commence business will also be required for inspection when any of the contracts are voidable unless such Certificate is obtained by a certain date, and* (c) *Memorandum and Articles of Association.*

2. Copy of Resolutions authorizing issue.

3. Certified Copy of Agreement relating to issue of Shares credited as fully-paid and of any other contracts mentioned in prospectus.

4. In the case of an issue for cash, copy of Prospectus, Offer for Sale or Circular of issue, stating all material conditions relating to the flotation of the Issue (and in the case of a new Company) to the formation of the Company\* *and if publicly advertised, copy of newspaper in which the full Prospectus was advertised.*

5. If issued *pro rata* to existing Shareholders, undertaking to split letters of renunciation.

6. Specimen (or advance proof) of Allotment Letter, and, if possible of *Scrip and Definitive Certificates.* *If the Allotment Letters bear a Form of Renunciation there should be included in No. 7 an undertaking to split Letters of Allotment on request.* In order to facilitate the certification of transfers it is suggested that the Allotment Letters should contain the distinctive numbers of the Shares to which they relate.

7. Letter (a) giving distinctive numbers of Shares issued (b) undertaking to issue all the Allotment Letters simultaneously and to certify transfers against Allotment Letters, and (c) stating (in the case of a further issue) whether or not the Shares are identical† in all respects with existing Shares.

8. *In all cases where power has been taken in the Articles of Association to issue Share Warrants to Bearer, an undertaking from the Company will be required to the effect (1) that in the event of the Company deciding to issue Share Warrants to Bearer, such warrants will be issued in exchange for Registered*

*Shares within three weeks of the deposit of the Share Certificate for Registered Shares, and (2) that the Company will on request certify transfers against the deposit of Share Warrants to Bearer.*

9. Approximate date when Definitive Certificates will be ready for issue.

10. In all issues other than Government or Municipal Loans, whether by Prospectus or otherwise, particulars of any underwriting must be disclosed, and copy of underwriting Agreement, and of sub-underwriting letter, if any, must be produced.

11. In case of a Debenture issue, copy of draft of Trust Deed.

12. List of allottees or present holders—name, address and holding (when required).

## B

In the absence of any Prospectus publicly advertised in this Country, or circular to Shareholders, the Committee will also require an advertisement in two leading London Morning papers giving all material conditions relating to the formation of the Company\* and to the flotation of the Issue, and stating that the Directors collectively and individually are responsible for the information advertised.

These details must also include official statements as to

- (1) The Capital, authorized and issued.
- (2) Borrowing Powers and the extent to which they have been exercised.
- (3) Date and particulars of Incorporation.
- (4) Names and addresses of Directors, Bankers, Auditors and Secretary.
- (5) Objects of the Company, nature of its business or particulars of property acquired.

## C

Where a Broker is instructed to sell on behalf of a Company a further issue of Stock or Shares forming a part of an amount previously created (permission to deal, if necessary, having been given for the original issue) he may obtain permission to deal on presentation of a letter from the Company authorizing him to make the sale, or he may sell the Stock or Shares previous to permission being given, provided he makes the sale subject to the permission being granted.

## D

In the case of Securities of a purely local nature within Great Britain or Northern Ireland or of a Colonial or Foreign issue of which no former security has been quoted previously on a Colonial or Foreign Exchange, a Broker may make a specific bargain with the authority of the Chairman or the Deputy-Chairman or two members of the sub-Committee on New Issues and Official Quotations, but bargains shall not be recorded in the Supplementary List until permission to deal in the issue has been granted by the Committee.

## E

In the case of Securities quoted on a Colonial or Foreign Exchange or in the case of New Issues where a previous issue or issues of the same Country, Corporation, or Company have been quoted on a Colonial or Foreign Exchange, a Broker may make a specific bargain, but bargains shall not be recorded in the Supplementary List until permission to deal in the issue has been granted by the Committee.

### \* MATERIAL CONDITIONS.

*These include the following—*

*The rights conferred by the different classes of shares, including voting rights.*

*The amount of Shares and Debentures or Debenture Stock that have been issued, the dates and prices at which they have been issued, and the amounts of any underwriting or other commissions that have been paid in connection therewith.*

*The names and addresses of the Vendors of any property purchased or acquired by the Company or proposed so to be purchased or acquired and the amount payable in cash, shares or debentures to the Vendor, and where there is more than one separate Vendor, or the Company is a sub-purchaser, the amount so payable to each Vendor.*

*The amount or estimated amount of the preliminary expenses.*



*Full particulars of the value and extent of the interest of every Director in the promotion of or the property proposed to be acquired by the Company or in any profit made by any Vendor or Promoter with a statement of the amount paid or agreed to be made to any Director or to his firm or any Company in which he is interested either to qualify him or to induce him to become a Director or otherwise for services rendered by him.*

*The names and parties to every material contract and the place where they can be inspected.*

*Whether any Shares are under option, and if so, at what prices and when such options expire.*

*Particulars as to qualification and remuneration of Directors.*

*† A statement that shares are in all respects identical is understood to mean that*

*(1) They are of the same nominal value, and that the same amount per Share has been called up.*

*(2) They carry the same rights as to unrestricted transfer, attendance and voting at meetings, and in all other respects.*

*(3) They are entitled to dividend at the same rate and for the same period, so that at the next ensuing distribution the dividend payable on each Share will amount to exactly the same sum.*

## 35.

## OFFICIAL QUOTATIONS

### A

### CONDITIONS PRECEDENT TO AN APPLICATION FOR OFFICIAL QUOTATION

(Rules 162 and 163.)

#### 1. That the Prospectus—

Shall have been publicly advertised ;

Agrees substantially with the Act of Parliament or Articles of Association ;

Provides for the payment of 10 per cent upon the amount subscribed ;

If offering Debentures or Debenture Stock states fully the terms of redemption.

If offering Debentures states whether they are to Bearer or Registered.

In cases where a Company has sold an issue of Capital or Debentures or Debenture Stock which is subsequently offered for public subscription either by the Company or any subsequent purchaser, states the authority for the issue and all material conditions of sale.

2. That two-thirds of the amount proposed to be issued of any class of Shares or Securities, whether such issue be the whole or a part of the authorized amount, shall have been applied for by and unconditionally allotted to the public, Shares or Securities granted in lieu of money payments not being considered to form a part of such public allotment.

3. That the Articles of Association, and the Trust Deed where such is required, contain the provisions specified hereafter.

4. That the Certificate or Bond is in the form approved.

### B

### ARTICLES OF ASSOCIATION

Articles of Association should contain the following provisions—

1. That none of the funds of the Company shall be employed in the purchase of, or in loans upon the security of its own Shares ;

2. That Directors must hold a share qualification ;

3. That the borrowing powers of the Board are limited ;

4. That the non-forfeiture of dividends is secured ;

5. That the common form of transfer shall be used ;

6. That all Share and Stock Certificates shall be issued under the Common Seal of the Company, and shall bear the signatures of one or more Directors and the Secretary ;
7. That fully-paid Shares shall be free from all lien ;
8. That the interest of a Director in any contract shall be disclosed before execution, and that such Director shall not vote in respect thereof ;
9. That the Directors shall have power at any time and from time to time to appoint any other qualified person as a Director either to fill a casual vacancy or as an addition to the Board, but so that the total number of Directors shall not at any time exceed the maximum number fixed ; but that any Director so appointed shall hold office only until the next following Ordinary General Meeting of the Company, and shall then be eligible for re-election ;
10. That a printed copy of the Report, accompanied by the Balance Sheet and Statement of Accounts, shall, at least seven days previous to the General Meeting, be delivered or sent by post to the registered address of every member, and that three copies of each of these documents shall at the same time be forwarded to the Secretary of the Share and Loan Department, The Stock Exchange, London ;
11. That the charge for a new Share Certificate issued to replace one that has been worn out, lost, or destroyed shall not exceed one shilling.

## C

## TRUST DEEDS

Trust Deeds should contain the following provisions—

1. Where provision is made that the security shall be repayable at a premium, either at a fixed date or at any time upon notice having been given, the Trust Deed must further provide that should the Company go into voluntary liquidation for the purpose of amalgamation or reconstruction the security shall not be repayable at a lower price.
2. The following clause should be inserted in all Deeds—  
 “ The statutory power of appointing new Trustees hereof shall be vested in the Company, but a Trustee so appointed must in the first place be approved of by a Resolution of the Debenture (or Debenture Stock) holders passed in the manner specified in the Schedule hereto. A Corporation or Company may be appointed a Trustee of these presents.”
3. In the clause regulating the convening of meetings of the Debenture (or Debenture Stock) holders, the following words should be inserted,  
 “ and the Trustee or Trustees shall do so upon a requisition in writing signed by holders of at least one-tenth of the nominal amount of Debentures (or Debenture Stock) for the time being outstanding.”
4. The clause defining an “ Extraordinary Resolution ” must provide  
 “ that “ the expression ‘ Extraordinary Resolution ’ means a resolution passed at a meeting of the Debenture (or Debenture Stock) holders duly convened and held at which a clear majority in value of the whole of the Debenture (or Debenture Stock) holders is present in person or by proxy and carried by a majority consisting of not less than three-fourths of the persons voting thereat upon a show of hands, and if a poll is demanded then by a majority consisting of not less than three-fourths in value of the votes given on such poll.”
5. Should Debentures or Debenture Stock be entitled “ First Mortgage,”



provision must be made for the creation of a specific first mortgage in favour of the Debenture or Debenture Stock holders.

## D SHARE AND STOCK CERTIFICATES

All Certificates should state on their face the authority under which the Company is constituted and the amount of the authorized capital of the Company. The method of signature must be in accordance with the Articles of Association.

All Certificates should bear a foot-note to the effect that no Transfer of any portion of the holding can be registered without the production of the Certificate.

Where the Capital of a Company consists of more than one class of Shares of the same denomination, the distinctive numbers of the Shares of each class must be printed on the face of the Share Certificates.

All Preference Share Certificates should bear on their face a statement of the Company's capital and the conditions, both as to capital and dividends, under which the Shares are issued.

Debentures and Debenture Stock Certificates should, in addition to legal requirements, state on their face the authority under which the Company is constituted, the nominal Capital of the Company, the dates when the interest on the Debentures or Debenture Stock is payable, and the authority under which the issue is made (i.e. Articles of Association and resolutions); and on their back the conditions of issue, redemption, and transfer.

## E BONDS

Bonds must specify the amount and conditions of the loan, and the powers under which it has been contracted.

Bonds and Debentures of English Companies must be under the Common Seal of the Company and must bear the requisite autographic signatures.

When an issue of Colonial or Foreign Bonds or Debentures is made wholly or partly in London, those issued in London must bear the autographic counter signature of the London Agents or Contractors.

## F NEW COMPANIES

Before the application form can be issued for signature there must be supplied—

A Copy of the Prospectus.

Two Copies of the Articles of Association.

In the case of Debentures or Debenture Stock the Trust Deed [where possible before execution].

G After the application form has been signed there must also be supplied in the case of—

## SHARES

The Certificate of Incorporation, and the Certificate that the Company is entitled to commence business.

Two certified copies of the Prospectus, endorsed with the date when first advertised.

Two certified copies of the Memorandum and Articles of Association.

The original Letters of Application.

The Allotment Book containing a List of Applicants, the number applied for by each, and the result of each Application, with a Summary signed by the Chairman and Secretary.

Should the allotment have taken place at an interval of six months or more before the date of the application, a certified list of present shareholders will also be required.

A Copy of the Letter of Allotment and the date when posted.

A Specimen of the Share Certificates.

Authenticated copies of all Concessions and similar documents, with notarially certified printed translations, and certified printed copies of all Contracts and Agreements.

A Statutory Declaration by the Chairman and Secretary, stating the following particulars—

1. That the Prospectus complies with the provisions of the Companies Acts, 1908–1917.
2. That all documents required by the Companies Acts 1908–1917, have been duly filed with the Registrar of Joint-Stock Companies, and the dates of filing.
3. The number of Shares applied for by the public.
4. The number of Shares allotted unconditionally to the public (Nos. to           ), and the amount per Share paid thereon in cash.
5. The total number of Allottees and the largest number of Shares (*a*) applied for by and (*b*) allotted to any one applicant.
6. The number of Shares allotted for a consideration other than cash (being Nos. to           ).
7. That the Share Certificates have been or are ready to be issued.
8. That the purchase of the property has been completed, and the purchase-money paid.

**H** After the application form has been signed there must be supplied in the case of—

## DEBENTURES AND DEBENTURE STOCK

The Certificate of Incorporation, or Act of Parliament, and the Certificate that the Company is entitled to commence business.

A Certified printed copy of the Mortgage Deed or other similar document, and the Official Certificate of the Registration of the Mortgage or Charge.

Certified copies of the Articles of Association, Resolutions, or other authority for the present issue.



Two Certified copies of the Prospectus.

The original Letters of Application.

The Allotment Book containing a list of applicants, the amount applied for by each, and the result of each application, with a summary of the whole, signed by the Chairman and Secretary.

Should the allotment have taken place at an interval of six months or more before the date of the application, a Certified List of present Stockholders will also be required.

A copy of the Allotment Letter, and the date when posted.

A Specimen of the Debentures or Debenture Stock Certificate, and of the Scrip where Scrip is issued; Certificates of Debenture Stock allotted to vendors in lieu of money payments being enfaced "Issued to Vendors."

A copy of the last published Report and Accounts.

A Statutory Declaration by the Chairman and Secretary, stating—

1. That the Prospectus complies with the provisions of the Companies Acts, 1908-1917, and that all documents required by that Act have been duly filed with the Registrar of Joint-Stock Companies, and the dates of filing.
2. In the case of an English Company charging property abroad, that the necessary Mortgage has been properly legalized in the country where the property is situated.
3. The amount of Stock applied for by the public.
4. The amount unconditionally allotted to the public (Nos. to                   ).
5. The amount, viz. : £                    %, paid thereon in cash.
6. The amount allotted for a consideration other than cash (Nos. to                   ).
7. The total number of Allottees.
8. The largest amount of Debentures or Debenture Stock (a) applied for by, and (b) allotted to any one applicant.
9. That the Debentures or Debenture Stock Certificates have been or are ready to be issued.
- 9A. A specimen of the Debenture or Debenture Stock Certificate and of the Scrip where scrip is issued.
10. That a Trust Deed has been executed and completed, if such be the case.
11. The effect of such Trust Deed, and the nature of the charge created thereby in favour of the Debenture-holders.

A Statutory Declaration by the Chairman and Secretary, stating—

1. The total amount of the Authorized Capital of the Company, and how constituted.
2. The number of Shares allotted unconditionally to the public (Nos. to                   ), and the amount paid on each Share in cash.
3. The number of Shares taken by Concessionnaires, Owners of Property, Contractors or other parties not included in the public allotment (being Nos. to                   ).
4. That the Share Certificates have been or are ready to be issued.
5. That the purchase of the property has been completed and the purchase-money paid.

## SCRIP

**I** In addition to the requirements made in the case of definitive Stock or Bonds, a Specimen of the Scrip Certificate must be supplied.

In cases where a Government, Municipality, Corporation or Company has sold an issue of Stock, Shares or Securities which is subsequently offered for public subscription by the purchaser, evidence must be produced that the purchasing House has received due authority to issue the Scrip on account of the Government, Municipality, Corporation or Company, or in the alternative such Scrip must be enfaced "Contractors' Scrip."

**K** After the application form has been signed there must be supplied in the case of—

## FURTHER ISSUES

A King's printers' copy of the Act of Parliament authorizing, the Resolutions, &c., creating, and the Circular or Prospectus offering, the new issue.

If Shares have been issued credited as fully or partly paid, certified printed copies of the Contracts relating thereto.

A Copy of the Allotment Letter.

A Copy of the last Report and Accounts.

A Specimen of the Share Certificate.

The Allotment Book unless the allotment is *pro rata*.

A Statutory Declaration by the Secretary stating—

1. That the Prospectus or Circular complies with the provisions of the Companies Acts, 1908–1917 ;
2. That all documents required by the Companies Acts, 1908–1917, have been duly filed with the Registrar of Joint-Stock Companies, and the dates of filing ;
3. That the Shares (Nos.                      to                      ) have been applied for by and unconditionally allotted to the shareholders or the public or sold upon the market, as the case may be ;
4. The amount per Share paid in cash ;
5. The total number of Allottees, and the largest number of Shares applied for by and allotted to any one applicant ;
6. That Certificates have been or are ready to be issued.
7. That no impediment exists to the Settlement of the Account.
8. It must also be stated whether or not the shares are in all respects identical with those already quoted in the Official List.

The statement that Shares are in all respects identical means that—

They are of the same nominal value, and that the same amount per Share has been called up.

They carry the same rights as to unrestricted transfer, attendance and voting at meetings, and in all other respects.

They are entitled to dividend at the same rate and for the same period, so that at the next ensuing distribution the dividend payable on each share will amount to exactly the same sum.

The statement that Stock is in all respects identical means that—

All the Stock is entitled to the same rights as to unrestricted transfer, and in all other respects.



All the Stock is entitled to dividend at the same rate and for the same period, so that at the next ensuing distribution the dividend payable on each £100 of the Stock will amount to exactly the same sum.

**L** After the application form has been signed there must be supplied in the case of—

#### VENDORS' SHARES

A Certified List of the present holders of the Vendors' Shares.

A Certified Copy of the last published Report and Accounts of the Company.

A Specimen of the Share Certificate.

A Statutory Declaration by the Secretary stating—

1. That the Vendors' Shares (Nos.                      to                      ) have all been issued and Certificates delivered ;
2. That the Shares are in all respects identical with those already quoted in the Official List.

*These particulars are not now required as they were deleted by a rule passed on 26th July, 1926.*

**M** After the application form has been signed there must be supplied in the case of—

#### OLD COMPANIES

The Certificate of Incorporation, or Act of Parliament, and the Certificate that the Company is entitled to commence business.

Authenticated copies of all Concessions and similar documents, with notarially certified printed translations.

Certified copies of all Prospectuses, original or otherwise, endorsed with the date when first advertised.

Two Certified copies of the Memorandum and Articles of Association.

A Specimen of the Share Certificate and of the Allotment Letter.

A Certified copy of present Register of Shareholders.

Certified printed copies of Contracts, Agreements, etc., together with copies of all Contracts relating to the issue of Shares credited as fully or partly paid.

A Certified copy of the Company's last published Report and Accounts.

A short history of the Company, setting forth its origin, progress, dividends, etc., the number of transfers registered during the last twelve months, and the number of Shares represented by such transfers.

Statutory Declaration by the Chairman and Secretary stating the following particulars—

1. That the Prospectus complied with the provisions of the Companies Acts, 1908–1917.
2. That all documents required by the Companies Acts, 1908–1917, have been duly filed with the Registrar of Joint-Stock Companies, and the dates of filing.
3. The number of Shares applied for by the Public.
4. The number of Shares allotted unconditionally to the public (Nos.                      to                      ), and the amount per Share paid thereon in cash.
5. The number of Shares allotted for a consideration other than cash being (Nos.                      to                      ).
6. That the Share Certificates have been or are ready to be issued.
7. That the purchase of the properties has been completed and the purchase-money paid.

**N** After the application form has been signed, there must be supplied in the case of—

#### COLONIAL AND FOREIGN COMPANIES

The Certificate of Incorporation, or Act of Parliament, or other similar document.

Two copies of the Statutes or Articles of Association or notarial translations of the same.

A Certified List of present Shareholders.

A Specimen of the Share Certificate.

Copies of all Agreements, Concessions, Deeds, etc., or notarially certified printed translations of the same.

A Certified copy of last published Report and Accounts, or translation of the same.

Official evidence of quotation in the country to which they belong, or where the issue has been made.

A short history of the establishment and progress of the Company from its incorporation to the present time, including particulars as to the issue of the Capital.

A Declaration stating—

1. The number of Shares allotted ;
2. The amount per Share paid in cash ;
3. That the Shares have been or are ready to be issued.
4. That no impediment exists to the Settlement of the Account.

**O** After the application form has been signed, there must be supplied in the case of—

#### RECONSTRUCTED COMPANIES

The Certificate of Incorporation, and the Certificate that the Company is entitled to commence business.

A statement of the plan of reconstruction, together with certified copies of all resolutions passed and Circulars issued in connection with the reconstruction.

The Allotment Book, with a Summary signed by the Chairman and Secretary.

The Allotment Letter, and the date when posted.

A Specimen of the Share Certificate.

Two Certified copies of the Memorandum and Articles of Association.

Certified printed Copies of all Contracts, Agreements, etc.

Copies of all Contracts relating to the issue of fully or partly paid Shares.

A Statutory Declaration by the Chairman and Secretary stating—

1. That all Documents required by the Companies Acts, 1908-1917, have been duly filed with the Registrar of Joint-Stock Companies and dates of filing.
2. The Authorized Capital of the Company.
3. The number of Shares to which Shareholders in the old Company were



entitled; the number and distinctive numbers of Shares unconditionally allotted to such Shareholders; and the amount per Share (a) paid thereon in cash, and (b) credited as paid up.

4. The number and distinctive numbers of Shares applied for by and allotted unconditionally to the public, and the amount per Share (a) credited as paid up, and (b) paid thereon in cash.
5. That the Share Certificates have been or are ready to be issued.
6. That no impediment exists to the Settlement of the Account.

**P** After the application form has been signed the following documents must be supplied in the case of—

#### LOANS

Details of the creation of the Loan, and the authority under which it is issued, including authenticated copies of concessions, etc., with notarially certified translations.

The Authority to the Agents or Contractors to receive subscriptions.

A Certified Copy of the Prospectus.

Evidence that all Bonds issued and payable abroad bear the signature of some properly authorized person.

A Specimen Bond, together with a Bond duly executed, or Scrip Certificate if issued.

Statutory Declaration by the Agents, stating—

1. The amount allotted unconditionally to the public.
2. That the numbers and denominations of those Bonds which bear the autographic signature of the London Agents or Contractors.
3. That the required amount, viz., £        per cent has been paid thereon in cash.
4. That the Scrip or Bonds have been or are ready to be issued.
5. That no impediment exists to the Settlement of the Account.

**Q** After the application form has been signed the following documents must be supplied in the case of—

#### BONDS QUOTED ABROAD

Official evidence of quotation in the country to which they belong or where the issue has been made.

Notarially certified printed translations of all Prospectuses, and of the Laws creating and authorizing the Loan.

A Specimen Bond, together with a Bond duly executed.

An Official Certificate setting forth—

1. The authorized and issued amounts of the Loan, and the terms of issue.
2. The distinctive numbers and denominations of the Bonds.
3. Evidence that all Bonds bear the autographic signature of some properly authorized person.

## FAILURES

(Rule 176 [1].)

36.

1. As soon after declaration as possible all Members having accounts open with the Defaulter should furnish the Official Assignee with two statements, showing respectively—

Statements  
of Accounts  
open.

(a) A copy of the Jobbers' Ledger for the current Account.

Jobbers'  
Ledger.

(b) All bargains which have been closed at "Hammer Prices." If there are any bargains for future dates, these must be set out on separate sheets for each Account.

Closing at  
Hammer Price  
Bargains for  
future dates.

In the case of a Ticket issued by a Defaulter for Securities which have not been paid for, a contra entry should be made and the original bargain closed at the "Hammer Price."

Ticket  
issued by  
Defaulter.

2. Differences due to or from a Defaulter on the current Account are to be set off against those due from or to the Official Assignee on the Account closed at the Hammer. Such set off is not to be made until the differences are payable. A creditor for "Hammer Price" differences, who has paid a difference on the current Account is entitled to the return of such difference, if this claim is equal to or greater than the amount paid and ranks upon the estate for the balance. If less he is entitled to the return of the amount claimed.

Differences.

3. A Member having delivered securities to a Defaulter and not having received due payment therefor should immediately apply to the Defaulter for the return of such securities.

Return of  
Securities  
not paid for.

If such securities were delivered on a Ticket the Member who had delivered should immediately apply to the Member next to him on the trace for payment handing him the Defaulter's dishonoured cheque and the securities (if any) recovered.

Claim for  
payment  
from  
immediate  
buyer.

In the case of tickets issued by the Settlement Departments application should be made to that Department for the trace.

Settlement  
Department  
Tickets—  
Trace.

Each Member on the trace should act in a similar manner until the ultimate Member, who dealt with the Defaulter, is reached. This Member should immediately lodge his claim with the Official Assignee.

If an intermediary on the trace be a Defaulter the dishonoured cheque and securities (if any) should be delivered to the Official Assignee.

Intermediary  
a Defaulter.

## IF THE DEFAULTER IS A BROKER

4. Immediately on the declaration, Members having accounts open with him should apply to the Official Assignee for the names and addresses of the Clients (if any) for whom the bargains are open.

Reads.

5. If the client is in default all bargains open for him should at once be closed by sale or purchase in the Market. Putting the Stock or Shares on the "book" without a definite agreement with the Client is not closing.

Client in  
default :  
Closing.

6. (a) If the Client is not in default the Member should immediately communicate with him. If desired the Official Assignee will supply a suggested form of letter.

Client:  
Communi-  
cation with.  
Completion  
Price.

(b) A Client not in default is bound to complete his



Completion : No obligation on Member to "make- down."	transactions at the price of the bargain, or in the case of securities carried over, at the last making-up price and rate. (c) The Client may complete his transactions direct with the Member or appoint a Broker, Banker or other Agent to complete on his behalf, but no Member is compelled to accept instructions from the Client to "make-down."
Instructions to close.	(d) If the Client gives instructions to close, the Member is at liberty to do so, the difference between the bargain price and the closing price being payable by the Client to the Member or by the Member to the Client as the case may be. Putting the Stock or Shares on the "book" without a definite agreement with the Client is not closing.
Failure to give instructions.	(e) If after due communication the Client fails to give instructions by 3 o'clock on the day before Contango Day (or by 11 o'clock on Saturday if the Contango Day be Monday), the Member is entitled to close forthwith.
Supplemental account to be rendered on completion.	7. As soon as a Client has personally completed his bargain or the Member has agreed to "make-down" with a new Broker, a supplemental account must be furnished to the Official Assignee, setting out only the bargains completed. This account will be the same as regards the prices as the former "Hammer Price" account, but with these items on the reverse sides. If this account shows a difference due to the Official Assignee, it must be paid when due. If the account shows a difference due to the Member furnishing it, such difference will rank as a preferential claim on differences, and be paid in full if the differences in the Official Assignee's hands are sufficient.
Preferential claim on differences.	

### FAILURES

37.

THIS INDENTURE made the                      day of  
19                      BETWEEN  
residing at  
and now or recently carrying on business on The Stock  
Exchange and at                      in the City of London  
as Stock and Share                      (hereinafter called "the Defaulters")  
of the one part and

of New Court, Throgmorton Street, in the  
said City and of the Stock Exchange the Official Assignee of  
the said Stock Exchange (hereinafter called the "Official  
Assignee") of the other part.

WHEREAS the Defaulters signed and handed in an application  
for re-election and were re-elected Members of The Stock  
Exchange for the year ending the 24th day of March, 19

AND WHEREAS the Defaulters were on the  
day of 19                      duly declared to be Defaulters on The  
Stock Exchange.

NOW THIS INDENTURE WITNESSETH as follows—

1. The Defaulters as BENEFICIAL OWNERS hereby as regards  
their joint estate assign and convey and each of them as  
BENEFICIAL OWNER as regards his separate estate hereby assigns  
and conveys to the Official Assignee ALL the property (real  
as well as personal) whatsoever and wheresoever (except pro-  
perty which by reason of its subjecting the holder to the  
performance of any onerous covenant or obligation the Official  
Assignee may think fit by writing under his hand to disclaim)

which is held by or on behalf of and belongs to the Defaulters jointly or either of them separately at the date of this Deed and is or now represents property or the proceeds or produce of property which belonged to them or to either of them at the date on which they were declared Defaulters on The Stock Exchange.

To HOLD the same unto and to the use of the Official Assignee and his assigns being the Official Assignee or Official Assignees for the time being of The Stock Exchange according to the respective natures and tenures thereof and as regards freehold property in fee simple UPON TRUST for sale and collection and distribution in manner provided by the Rules and Regulations of The Stock Exchange set forth in the Schedule hereto and in accordance with the usage and practice of The Stock Exchange of the net proceeds thereof amongst the creditors of the Defaulters whose debts or claims arise from Stock Exchange transactions and who being Members of The Stock Exchange are entitled or who not being Members of The Stock Exchange are admitted to participate in the distribution thereof under and in accordance with the said Rules and Regulations.

2. The Defaulters and each of them hereby declare that they hold or respectively hold and will stand possessed of the excepted property which may be disclaimed as aforesaid if any UPON TRUST to deal with and dispose of the same and the income and proceeds thereof if the Official Assignee shall so require in such manner as he shall from time to time direct to the intent and so that any net proceeds thereof or any benefit to result therefrom may be handed over to the Official Assignee and may form part of and be dealt with and administered in like manner as and as part of the property hereinbefore assigned and conveyed.

3. The Defaulters and each of them hereby respectively and irrevocably appoint the Official Assignee and his assigns aforesaid to be their and his Attorney, in their and his name and on their and his behalf to execute and sign all deeds or other documents which the Official Assignee or his aforesaid assigns shall deem necessary or expedient for transferring any stocks shares or securities registered or inscribed in the name of the Defaulters or either of them or for assigning or dealing with any of the excepted property the subject of the last preceding clause or for any other purposes necessary or deemed expedient for giving effect to and carrying out the purposes of these presents.

4. Any difference or dispute of whatsoever nature which may arise with regard to the effect or operation of these presents or of any of the provisions thereof expressed or implied or incorporated therein or as to any claim to participate or the amount of ranking or otherwise howsoever in relation thereto shall be referred to and settled by the Committee for General Purposes of The Stock Exchange and their decision shall be final and bind all parties.

AS WITNESS the hands and seals of the parties hereto the day and year first aforesaid.

---

#### SCHEDULE

(Rules 170 (1), 171, 172, 174 to 189, 191 and the Appendix 36.)



## BUSINESS FOR A DEFAULTER

38. Regulations as to the transaction of business for a Defaulter's benefit—

(Rule 190.)

1. A preliminary Report from the Official Assignee must be submitted to the Committee.
2. The permission will expire on the next 25th March.
3. Speculative business for the Defaulter or for clients introduced by him is not allowed.
4. Business for clients of the Defaulter who are in default to him or other Members is not allowed

39.

## COMMISSIONS

## MINIMUM SCALE OF COMMISSIONS

Securities of or Guaranteed by the British or Indian Government having a currency of not more than Twelve years, in bargains of not less than £20,000 Stock .. .. .	.. .. .	} $\frac{1}{8}$ per cent on Stock.
Consols, $2\frac{1}{4}\%$ and $2\frac{1}{2}\%$ Annuities .. .. .	.. .. .	$\frac{3}{16}$ „ „ „ Stock.
Other British Government Securities .. .. .	.. .. .	
Indian Government Stocks .. .. .	.. .. .	
Metropolitan Consolidated Stocks .. .. .	.. .. .	
London County Consolidated Stocks .. .. .	.. .. .	} $\frac{1}{4}$ „ „ „ Stock.
Colonial Government Securities .. .. .	.. .. .	
County, Corporation and Provincial Securities (British, Indian, or Colonial) .. .. .	.. .. .	
Bank of England and Bank of Ireland Stock .. .. .	.. .. .	$\frac{1}{4}$ „ „ „ Money.
Foreign Government and Corporation Bonds. Price 1 or under .. .. .	.. .. .	
Foreign Railway and other Bonds to bearer. Price 1 or under .. .. .	.. .. .	} At discretion.
Foreign Government and Corporation Bonds. Price 5 or under .. .. .	.. .. .	
Foreign Railway and other Bonds to bearer. Price 5 or under .. .. .	.. .. .	} $\frac{1}{2}$ per cent on Stock.
Foreign Government and Corporation Bonds. Price 10 or under .. .. .	.. .. .	
Foreign Railway and other Bonds to bearer. Price 10 or under .. .. .	.. .. .	} $\frac{1}{16}$ „ „ „ Stock.
Foreign Government and Corporation Bonds. Price 20 or under .. .. .	.. .. .	
Foreign Railway and other Bonds to bearer. Price 20 or under .. .. .	.. .. .	} $\frac{1}{8}$ „ „ „ Stock.
Foreign Government and Corporation Bonds. Price over 20 .. .. .	.. .. .	
Foreign Railway and other Bonds to bearer. Price over 20 .. .. .	.. .. .	} $\frac{1}{4}$ „ „ „ Stock.
Registered Stocks .. .. .	.. .. .	$\frac{1}{2}$ „ „ „ Money.

Shares, Registered or Bearer (other than Shares of \$50 or \$100 denomination dealt in in the American Market).

Price	0	1	0 or under	..	..	At discretion.	
						s. d.	
Over	0	1	0 to	0	2	0	0 0 $\frac{1}{2}$ per Share.
"	0	2	0 to	0	3	6	0 0 $\frac{3}{4}$ " "
"	0	3	6 to	0	5	0	0 1 " "
"	0	5	0 to	0	15	0	0 1 $\frac{1}{2}$ " "
"	0	15	0 to	£1	10	0	0 3 " "
"	£1	10	0 to	£2	0	0	0 4 $\frac{1}{2}$ " "
"	£2	0	0 to	£3	0	0	0 6 " "
"	£3	0	0 to	£4	0	0	0 7 $\frac{1}{2}$ " "
"	£4	0	0 to	£5	0	0	0 9 " "
"	£5	0	0 to	£7	10	0	1 0 " "
"	£7	10	0 to	£10	0	0	1 3 " "
"	£10	0	0 to	£15	0	0	1 6 " "
"	£15	0	0 to	£20	0	0	2 0 " "
"	£20	0	0 to	£25	0	0	2 6 " "
"	£25	0	0 to	..	..	..	½ per cent on Money.

SHARES OF \$50 or \$100 DENOMINATION dealt in in the American Market.

Price	\$5 or under	..	..	..	At discretion.	
					s. d.	
Over	\$5 to	\$25	..	..	..	0 6 per Share.
"	\$25 to	\$50	..	..	..	0 9 " "
"	\$50 to	\$100	..	..	..	1 0 " "
"	\$100 to	\$150	..	..	..	1 6 " "
"	\$150 to	\$200	..	..	..	2 0 " "

With 6d. rise for every \$50, or portion thereof, in price.

Options for more than one Account .. .. . As on bargains.

Options for one Account or Less	..	..	..	..	} At discretion.
Bargains in partly-paid Stock or Shares of New Issues	..	..	..	..	
Bargains in Rights for Cash	..	..	..	..	
Powers of Attorney for Inscribed Stock	..	..	..	..	
Probate and other Valuations	..	..	..	..	
Securities Made-up or Made-down	..	..	..	..	
Short-dated Securities (having five years or less to run)	..	..	..	..	
Transfers of Stocks and Shares	..	..	..	..	

Small Bargains .. No lower Commission than £1 to be charged except in the case of (a) Transactions amounting to less than £100 in value on which a Commission of not less than 10s. must be charged, or (b) Transactions amounting to less than £20 in value on which a Commission of not less than 5s. must be charged.

40.

## REGULATIONS FOR REMISIERS

1. A Broker desirous of employing a Remisier shall apply to the Committee to cause the Remisier's name and address and the locality for which he is appointed Remisier to be inscribed in a Register to be kept for the purpose by the Secretary. The Register shall not be open to the inspection of the Members generally but only to the Committee sitting as such, or to a Sub-Committee thereof. The Committee shall have full power to refuse registration or to strike off the Register any person without reason assigned.

Remisier to be registered.



Remisier  
may act for  
one Broker  
only.

Remisiers  
may not  
divide with  
Principals or  
sub-agents.

Remisier  
may not  
advertise.  
Firms and  
Employees.

Contract  
Notes.

Personal  
Business.

2. No person shall be registered as a Remisier to more than one Broker.

3. A Remisier who shall under any circumstances either directly or indirectly divide or share his remuneration with his Principal shall be forthwith struck off the Register.

4. A Remisier may not advertise or issue Circulars to other than his own Principals.

5. A Remisier may be an individual or firm, but if an individual must not be a partner in a firm or in the employ of an individual or firm.

6. A Remisier must give the names of his Principals in whose names Contract Notes must be rendered.

7. A Remisier may not act as a Remisier for his personal business.

41.

## APPLICATION FOR REGISTRATION OF A REMISIER

(Rule 200, Appendix 40.)

*To the Committee for General Purposes  
of The Stock Exchange.*

GENTLEMEN,

request your permission to employ

(Name in full).....

residing at.....

as a Remisier for business at.....

.....for the year ending 24th March, 19...., in accordance  
with the provisions of Rule 200.

Mr.....is not a Partner in a Firm or in the  
employ of an individual or firm.

Yours faithfully,

THE STOCK EXCHANGE,  
of 19

Rule 200. A Broker shall be entitled to employ for the purpose of his business a Remisier resident outside Great Britain and Northern Ireland and the Irish Free State whose name is registered with the Committee in accordance with Appendix 40, and to remunerate such Remisier with a share not exceeding one-half of the Commission charged to the Principal he introduces whether such Commission be at the Minimum Scale as laid down in Appendix 39 or as modified by the provisions of Rules 195, 196 (2) and 197.

### APPENDIX 40.

#### REGULATIONS FOR REMISIERS.

1. A Broker desirous of employing a Remisier shall apply to the Committee to cause the Remisier's name and address and the locality for which he is appointed Remisier to be inscribed in a register to be kept for the purpose by the Secretary. The register shall not be open to the inspection of the Members generally but only to the Committee sitting as such or to a Sub-Committee thereof. The Committee shall have full power to refuse registration or to strike off the register any person without reason assigned.

2. No person shall be registered as a Remisier to more than one Broker.

3. A Remisier who shall under any circumstances either directly or indirectly divide or share his remuneration with his Principal shall be forthwith struck off the register.

4. A Remisier may not advertise or issue circulars to other than his own Principals.

5. A Remisier may be an individual or Firm, but if an individual must not be a Partner in a Firm or in the employ of an individual or Firm.

6. A Remisier must give the names of his Principals in whose names Contract Notes must be rendered.

7. A Remisier may not act as a Remisier for his personal business.

# RENEWAL OF APPLICATION FOR REGISTRATION OF REMISIERS

(Rule 200, Appendix 40.)

*To the Committee for General Purposes  
of The Stock Exchange.*

GENTLEMEN,

$\frac{I}{We}$  request renewal of permission to employ the following persons as Remisiers for the year commencing 25th March, 19...., in accordance with the provisions of Rule 200 :—

NAME.	LOCALITY.
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....

Assuring you that the above applications are strictly in accordance with Appendix 40 quoted below,

$\frac{I}{We}$  remain,

Yours faithfully,

THE STOCK EXCHANGE, LONDON,  
of 19

Rule 200. A Broker shall be entitled to employ for the purpose of his business a Remisier resident outside Great Britain and Northern Ireland and the Irish Free State whose name is registered with the Committee in accordance with Appendix 40, and to remunerate such Remisier with a share not exceeding one-half of the Commission charged to the Principal he introduces whether such Commission be at the Minimum Scale as laid down in Appendix 39 or as modified by the provisions of Rules 195, 196 (2) and 197.

## APPENDIX 40.

### REGULATIONS FOR REMISIERS.

1. A Broker desirous of employing a Remisier shall apply to the Committee to cause the Remisier's name and address and the locality for which he is appointed Remisier to be inscribed in a register to be kept for the purpose by the Secretary. The register shall not be open to the inspection of the Members generally but only to the Committee sitting as such or to a Sub-Committee thereof. The Committee shall have full power to refuse registration or to strike off the register any person without reason assigned.
2. No person shall be registered as a Remisier to more than one Broker.
3. A Remisier who shall under any circumstances either directly or indirectly divide or share his remuneration with his Principal shall be forthwith struck off the register.
4. A Remisier may not advertise or issue circulars to other than his own Principals.
5. A Remisier may be an individual or firm, but if an individual must not be a Partner in a firm or in the employ of an individual or firm.
6. A Remisier must give the names of his Principals in whose names Contract Notes must be rendered.
7. A Remisier may not act as a Remisier for his personal business.



## MARKING SLIP

ONLY ONE SECURITY TO BE ENTERED ON  
EACH SLIP

*Date*.....19.....

NAME OF STOCK OR SHARE	Bargains at Current Price.	+ + Bargains at Special Prices.	$\Delta$ Bargains done with or between Non- Members.	$\Phi$ Bargains done during un- official hours or on the previous day.

## RULE 166

Bargains marked will be officially recorded unless specially ordered otherwise by the Chairman, Deputy-Chairman or two Members of the Committee.

*Signature*

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